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Subtitle B—Regulations of the Department of Agriculture—(Continued)

CHAPTER XI—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MISCELLANEOUS COMMODITIES), DEPARTMENT OF AGRICULTURE

Part		*Page*
1200	Rules of practice and procedure governing proceedings under research, promotion, and education programs	7
1205	Cotton research and promotion	16
1207	Potato research and promotion plan	45
1208	Fresh cut flowers and fresh cut greens promotion and information	59
1209	Mushroom promotion, research, and consumer information order	77
1210	Watermelon research and promotion plan	97
1214	Kiwifruit research, promotion, and consumer information order	116
1215	Popcorn promotion, research, and consumer information	119
1216	Peanut promotion, research, and information order	130
1218	Blueberry promotion, research, and information order	144
1220	Soybean promotion, research, and consumer information	157
1230	Pork promotion, research, and consumer information	181
1240	Honey research, promotion, and consumer information order	206
1250	Egg research and promotion	225
1260	Beef promotion and research	241
1270	Wool and mohair advertising and promotion [Reserved]	

PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order

Sec.
1200.1 Words in the singular form.
1200.2 Definitions.
1200.3 Proposals.
1200.4 Reimbursement of Secretary's expenses.
1200.5 Institution of proceedings.
1200.6 Docket number.
1200.7 Judge.
1200.8 Motions and requests.
1200.9 Conduct of the hearing.
1200.10 Oral and written arguments.
1200.11 Certification of the transcript.
1200.12 Copies of the transcript.
1200.13 Administrator's recommended decision.
1200.14 Submission to Secretary.
1200.15 Decision by the Secretary.
1200.16 Execution of the order.
1200.17 Filing, extension of time, effective date of filing, and computation of time.
1200.18 Ex parte communications.
1200.19 Additional documents to be filed with hearing clerk.
1200.20 Hearing before Secretary.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion, and Education Programs

1200.50 Words in the singular form.
1200.51 Definitions.
1200.52 Institution of proceeding.

AUTHORITY: 7 U.S.C. 2111; 2620; 2713; 3409; 4313; 4509; 4609; 4814; 4909; 6008; 6106; 6206; 6306; 6410; 6807; and 7106.

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order

SOURCE: 47 FR 44684, Oct. 8, 1982, unless otherwise noted.

§ 1200.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1200.2 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means the Cotton Research and Promotion Act, as amended, Pub. L. 89–502, 89th Cong., approved July 13, 1966, 7 U.S.C. 2101–2119; the Egg Research and Consumer Information Act, as amended, Pub. L. 93–428, 93rd Cong., approved October 1, 1974, 7 U.S.C. 2701–2718; the Floral Research and Consumer Information Act, Pub. L. 97–98, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301–4319; the Potato Research and Promotion Act, as amended, Pub. L. 91–670, 91st Cong., approved January 11, 1971, 7 U.S.C. 2611–2627; the Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95–113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401–3417; the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590, 98th Cong., approved October 30, 1984, 7 U.S.C. 4601–4612; the Watermelon Research and Promotion Act, Pub. L. 99–198; 99th Cong., approved December 23, 1985, 7 U.S.C. 4901–4916; and any subsequent research, consumer information, promotion, and nutrition education acts established as Public Law by Congress.

(b) The term *Department* means the United States Department of Agriculture.

(c) The term *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) The term *judge* or *administrative law judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(e) The term *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(f) The term *Federal Register* means the publication provided for by the

Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501–1511), and acts supplementing and amending it.

(g) The term *hearing* means that part of the proceeding which involves the submission of evidence.

(h) The term *order* means any order or plan or any amendment to it which may be issued pursuant to the Act.

(i) The term *proceeding* means a proceeding forming the basis on which an order may be issued.

(j) The term *hearing clerk* means the hearing clerk, U.S. Department of Agriculture, Washington, DC.

(k) The term *board* means the board or council established by the order to administer the program.

[47 FR 44684, Oct. 8, 1982, as amended at 52 FR 12899, Apr. 20, 1987]

§ 1200.3 Proposals.

(a) An order may be proposed by any organization certified pursuant to the Act or any interested person affected by the Act, including the Secretary. Any person or organization other than the Secretary proposing an order shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration to be given as, in the Administrator's opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, the Administrator shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose an order, the Administrator shall sign and cause to be served a notice of hearing, as provided herein.

§ 1200.4 Reimbursement of Secretary's expenses.

If provided for in the Act or any amendment thereto, expenses incurred by the Secretary in preparing or amending the order, administering the order, and conducting the referendum shall be reimbursed.

§ 1200.5 Institution of proceedings.

(a) *Filing and contents of the notice of hearing*. The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: Except that in the case of hearings on amendments to an order, the time of the hearing may be less than 15 days but shall not be less than three days after the date of publication in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity*. (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each organization known by the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in the Administrator's discretion, are best calculated to bring the notice to the attention of the persons interested therein; and

(iv) By forwarding copies of the notice of hearing addressed to those Governors of the States and executive heads of territories and possessions of the United States and the mayor of the District of Columbia that are directly affected by such order.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; failure to give notice in the manner provided in paragraphs (b)(2) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity*. There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1200.6 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1200.7 Judge.

(a) *Assignment*. No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Power of judge*. Subject to review by the Secretary, as provided elsewhere in this subpart, the judge in any proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge*. In case of the absence of the judge or the judge's inability to act, the powers and duties to be performed by the judge under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge*. The judge may at any time withdraw as judge in a proceeding if such judge deems himself or herself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Secretary may deem appropriate in the circumstances.

§ 1200.8 Motions and requests.

(a) *General*. (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1200.17(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to certification of the transcript pursuant to § 1200.11 or by the Secretary if made thereafter.

(b) *Certification to Secretary*. The judge may, in his or her discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1200.9 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1200.5 (relating to the giving of notice of the hearing): Except that if the change in time or place of hearing is made less than five days prior to the date previously fixed for the hearing, the judge either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his or her name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting such appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before the judge, such judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: Except that the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

(ii) In case the judge has ordered that a person be precluded from further action as counsel or representative in the proceeding, the judge within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, that person shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 1200.5(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *General.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, such party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the presence of the person who made or prepared the same. The judge shall exercise discretion in determining whether an official publication of such record or document shall be necessary, or whether a copy would be permissible. If permissible such a copy should be attested to by the person having legal custody of it, and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of authenticity, relevancy, and materiality, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing), the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice at the hearing may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: Except that interested persons shall be given an adequate period of time, at the hearing or subsequent to it, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

§ 1200.10 Oral and written arguments.

(a) *Oral argument before the judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that

the judge finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings, and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1200.9(d), that person shall include in the brief a concise statement concerning each such objection, referring, where practicable, to the pertinent pages of the transcript.

§ 1200.11 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings, and proposed conclusions and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. The judge shall attach to the original transcript of the testimony a certificate stating that, to the best of the judge's knowledge and belief, the transcript is a true transcript of the testimony given at the hearing, except in such particulars as the judge shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as the judge shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript, each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effectuated in copies other than the official record copy.

§ 1200.12 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at a rate that may be agreed upon with the reporter.

§ 1200.13 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) a preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions about such issues, including the reasons or basis for such proposed findings; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed order

effectuating the Administrator's recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of the recommended decision, the Administrator shall give notice thereof and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed order and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript, and may suggest appropriate changes in the proposed order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of the Secretary's functions imperatively and unavoidably requires such omission.

§ 1200.14 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any; and such exceptions as may have been filed.

§ 1200.15 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) a statement of findings and conclusions, including the reasons or basis for such findings, upon all the material issues of fact, law, or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons, and (d) either (1) denial of the proposal to issue an order, or (2) if the findings upon the record so warrant, an order, the provisions of which shall be set forth and such order shall be complete except for its effective date and any determinations to be made under § 1200.16: *Except that* such order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 1200.16 have been met.

§ 1200.16 Execution of the order.

(a) *Issuance of the order.* The Secretary shall, if the Secretary finds that it will tend to effectuate the purposes of the Act, issue and make effective the order which was filed as part of the Secretary's decision pursuant to § 1200.15: Except that the issuance of such order shall have been approved or favored by eligible voters as required by the applicable Act.

(b) *Effective date of order.* No order shall become effective in less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date.

(c) *Notice of issuance.* After issuance of the order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1200.17 Filing, extension of time, effective date of filing, and computation of time.

(a) *Number of copies.* Except as provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk shall be filed in quadruplicate. Any documents or papers so required or authorized to be filed with the hearing clerk shall be filed with the judge during the course of an oral hearing.

(b) *Extension of time.* The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is so certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the secretary), or by the Secretary (after the record is transmitted to the secretary) upon request filed, and if, in the judgment of the judge,

Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing*. Any document or paper required or authorized by the foregoing provisions to be filed shall be deemed to be filed when it is postmarked or, if otherwise delivered, when it is received by the hearing clerk.

(d) *Computation of time*. Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: Except that when such time expires on a Sunday, or a Federal holiday, such period shall be extended to include the next following business day.

§ 1200.18 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision thereon shall an employee of the Department who is or may reasonably be expected to be involved in the decision process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: Except that procedural matters and status reports shall not be included within the limitation: And except further that an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda, stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, *ex parte communication* means any oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on a proceeding.

§ 1200.19 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1200.20 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When the Secretary so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions, and orders, and the Secretary shall then, after due consideration of the record, issue the final decision in the proceeding: Except the Secretary may issue a tentative decision in which event the parties shall be afforded an

opportunity to file exceptions before the issuance of the final decision.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs

SOURCE: 60 FR 37326, July 20, 1995, unless otherwise noted.

§ 1200.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and *vice versa*, as the case may demand.

§ 1200.51 Definitions.

As used in this subpart, the terms as defined in the acts shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means Floral Research and Consumer Information Act [7 U.S.C. 4301–4319]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act [7 U.S.C. 6801–6814]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Lime Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 6201–6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Watermelon Research and Promotion Act, as amended [7 U.S.C. 4901–4916], the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718], the Cotton Research and Promotion Act [7 U.S.C. 2101–2118], the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819], the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311], the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111], the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513], the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417], and the Wheat and Wheat Foods Research and Nutrition Education Act [7 U.S.C. 3401–3417].

(b) *Department* means the U.S. Department of Agriculture.

(c) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) *Judge* means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.

(e) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead.

(f) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term *order* shall include plans issued under the Acts listed in paragraph (a) of this section.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(h) *Proceeding* means a proceeding before the Secretary arising under section 1957 of the Act.

(i) *Hearing* means that part of the proceedings which involves the submission of evidence.

(j) *Party* includes the U.S. Department of Agriculture.

(k) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(l) *Decision* means the judge's initial decision and includes the judge's:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof;

(2) Order; and

(3) Rulings on findings, conclusions and orders submitted by the parties; and

(m) *Petition* includes an amended petition.

§ 1200.52 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that such order or any provision of such order or any obligation imposed in connection with an order is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the facts, avoiding a mere repetition of detailed evidence, upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *A motion to dismiss a petition: filing, contents, and responses to a petition.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the Order shall be governed by §§ 900.52(c)(2) through 900.71 of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders. However, each reference to *marketing order* in the title shall mean *order*.

PART 1205—COTTON RESEARCH AND PROMOTION

Subpart—Procedures for Conduct of Sign-up Period

DEFINITIONS

Sec.

1205.10 Act.
1205.11 Administrator.
1205.12 Cotton.
1205.13 Upland cotton.
1205.14 Department.
1205.15 Farm Service Agency.
1205.16 Order.
1205.17 Person.
1205.18 Producer.
1205.19 Importer.
1205.20 Representative period.
1205.21 Secretary.
1205.22 State.
1205.23 United States.

PROCEDURES

1205.24 General.
1205.25 Supervision of sign-up period.
1205.26 Eligibility.
1205.27 Participation in the sign-up period.
1205.28 Counting.
1205.29 Reporting results.
1205.30 Instructions and forms.

Subpart—Cotton Research and Promotion Order

DEFINITIONS

1205.301 Secretary.
1205.302 Act.
1205.303 Person.
1205.304 Cotton.
1205.305 Upland cotton.
1205.306 Bale.
1205.307 Fiscal period.
1205.308 Cotton Board.
1205.309 Producer.
1205.310 Importer.
1205.311 Handler.
1205.312 Handle.
1205.313 United States.
1205.314 Cotton-producing State.
1205.315 Marketing.
1205.316 Cotton-Producer organization.
1205.317 Cotton–Importer organization.
1205.318 Contracting organization or association.
1205.319 Cotton-producing region.
1205.320 Marketing year.
1205.321 Part and subpart.

COTTON BOARD

1205.322 Establishment and membership.
1205.323 Term of office.
1205.324 Nominations.
1205.325 Selection.
1205.326 Acceptance.
1205.327 Vacancies.
1205.328 Alternate members.
1205.329 Procedure.
1205.330 Compensation and reimbursement.
1205.331 Powers.
1205.332 Duties.

RESEARCH AND PROMOTION

1205.333 Research and promotion.

EXPENSES AND ASSESSMENTS

1205.334 Expenses.
1205.335 Assessments.
1205.336 ''Importer Reimbursements''.
1205.337 Influencing governmental action.

REPORTS, BOOKS, AND RECORDS

1205.338 Reports.
1205.339 Books and records.
1205.340 Confidential treatment.

CERTIFICATION OF COTTON PRODUCER ORGANIZATION

1205.341 Certification of cotton producer organization.
1205.342 Certification of cotton importer organizations.

MISCELLANEOUS

1205.343 Suspension and termination.
1205.345 Proceedings after termination.
1205.346 Effect of termination or amendment.
1205.347 Personal liability.
1205.348 Separability.

Subpart—Members of Cotton Board

1205.401 Definitions.
1205.402 Determination of Cotton Board membership.
1205.403 Nomination procedure.

Subpart—Cotton Board Rules and Regulations

DEFINITIONS

1205.500 Terms defined.

GENERAL

1205.505 Communication.

ASSESSMENTS

1205.510 Levy of assessments.
1205.511 Payment and collection.
1205.512 Collecting handlers and time of collection of $1 per bale assessment.
1205.513 Collecting handlers and time of collection of the supplemental assessment.
1205.514 Customs Service and the Collection of the $1 per bale assessment.
1205.515 Customs Service and the collection of the supplemental assessment.
1205.516 Reports and remittance to the Cotton Board.
1205.517 Failure to report and remit.
1205.518 Receipts for payment of assessments.

REIMBURSEMENTS

1205.520 Procedure for obtaining reimbursement.

WAREHOUSE RECEIPTS

1205.525 Entry of gin code number.

REPORTS AND RECORDS

1205.530 Gin reports and reporting schedule.
1205.531 Records.
1205.532 Retention period for reports and records.
1205.533 Availability of reports and records.

CONFIDENTIAL INFORMATION

1205.540 Confidential books, records, and reports.
1205.541 OMB control numbers.

Subpart—Fiscal Period [Reserved]

AUTHORITY: 7 U.S.C. 2101–2118.

Subpart—Procedures for Conduct of Sign-up Period

SOURCE: 62 FR 1660, Jan. 13, 1997, unless otherwise noted.

DEFINITIONS

§ 1205.10 Act.

The term *Act* means the Cotton Research and Promotion Act, as amended [7 U.S.C 2101–2118; Public Law 89–502, 80 Stat 279, as amended].

§ 1205.11 Administrator.

The term *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom authority has been delegated to act in the Administrator's stead.

§ 1205.12 Cotton.

The term *cotton* means all Upland cotton harvested in the United States and all imports of Upland cotton, including the Upland cotton content of products derived thereof. The term *cotton* does not include imported cotton for which the assessment is less than the *de minimis* assessment established by regulations.

§ 1205.13 Upland cotton.

The term *Upland cotton* means all cultivated varieties of the species *Gossypium hirsutum L.*

§ 1205.14 Department.

The term *Department* means the U.S. Department of Agriculture.

§ 1205.15 Farm Service Agency.

The term *Farm Service Agency*—formerly Agricultural Stabilization and Conservation Service (ASCS)—also referred to as ''FSA,'' means the Farm Service Agency of the Department.

§ 1205.16 Order.

The term *Order* means the Cotton Research and Promotion Order.

§ 1205.17 Person.

The term *person* means any individual 18 years of age or older, or any partnership, corporation, association, or any other entity.

§ 1205.18 Producer.

The term *producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper.

§ 1205.19 Importer.

The term *importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States, and the term import means any such entry.

§ 1205.20 Representative period.

The term *representative period* means the 1995 calendar year.

§ 1205.21 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has been delegated to act in the Secretary's stead.

§ 1205.22 State.

The term *State* means each of the 50 states.

§ 1205.23 United States.

The term *United States* means the 50 states of the United States of America.

PROCEDURES

§ 1205.24 General.

A sign-up period will be conducted to determine whether eligible producers and importers favor the conduct of a

referendum on the continuance of the 1991 amendments to the Order.

(a) If the Secretary determines, based on the results of the sign-up period, that at least 10 percent (4,622) or more of the number of cotton producers and importers who voted in the 1991 referendum request the conduct of a continuance referendum on the 1991 Order amendments, a referendum will be held within 12 months after the end of the sign-up period. Not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers from any one state or from importers of cotton.

(b) If the Secretary determines that fewer than 10 percent (4,622) of the number of producers and importers who voted in the 1991 referendum do not favor a continuance referendum, no referendum will be held.

§ 1205.25 Supervision of sign-up period.

The Administrator shall be responsible for conducting the sign-up period in accordance with this subpart.

§ 1205.26 Eligibility.

Only persons who meet the eligibility requirements in this subpart may participate in the sign-up period. No person is entitled to sign up more than once.

(a) Except as set forth in paragraphs (b) and (c) of this section, the following persons are eligible to request the conduct of a continuance referendum:

(1) any person who was engaged in the production of Upland cotton during calendar year 1995; and

(2) any person who was an importer of Upland cotton and imported Upland cotton in excess of the *de minimis* assessment value of $2.00 per line item entry during calendar year 1995.

(b) A general partnership is not eligible to request a continuance referendum, however, the individual partners of an eligible general partnership are each entitled to submit a request.

(c) Where a group of individuals is engaged in the production of Upland cotton under the same lease or cropping agreement, only the individual or individuals who signed or entered into the lease or cropping agreement are eligible to participate in the sign-up period. Individuals who are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, are each entitled to submit a request if they share in the proceeds of the required crop as owners, cash tenants, share tenants, sharecroppers or landlords of a fixed rent, standing rent or share tenant.

(d) An officer or authorized representative of a qualified corporation or association may submit a request on behalf of that corporation or association.

(e) A guardian, administrator, executor, or trustee of any qualified estate or trust may submit a request on behalf of that estate or trust.

(f) An individual may not submit a request on behalf of another individual.

§ 1205.27 Participation in the sign-up period.

The sign-up period will be from January 15, 1997, through April 14, 1997. Those persons who favor the conduct of a continuance referendum and who wish to request that USDA conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by April 14, 1997.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers at each county office serving counties where cotton is produced, and shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, USDA shall mail a request form to each known, eligible, cotton importer. Importers who wish to request a referendum and who do not receive a request form in the mail by February 1, 1997, may participate in the sign-up period by submitting a signed, written, request for a continuance referendum, along with a copy of a U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 1995. Importers must submit their requests and supporting documents to USDA, FSA, DAPDFO, STOP 0539, Attention: William A. Brown, P.O. Box 2415, Room 3096-s, 1400 Independence Ave. SW., Washington, D.C., 20250–0539. All requests and supporting documents must

be received by the appropriate FSA office by April 14, 1997.

(c) Producers must request a continuance referendum by signing up in person at the county FSA office that serves the county where the producer's farm is located. A producer who wishes to request a referendum and whose name does not appear on the cotton producer list at the appropriate county FSA office may participate in the sign-up period by submitting a signed, written, request for a continuance referendum, along with a copy of a sales receipt for cotton produced during 1995. All requests and supporting documentation must be received by the appropriate FSA office by April 14, 1997.

§ 1205.28 Counting.

County FSA offices and FSA, Deputy Administrator for Program Delivery and Field Operations (DAPDFO), shall begin counting requests no later than April 15, 1997. FSA shall determine the number of eligible persons who favor the conduct of a continuance referendum.

§ 1205.29 Reporting results.

(a) Each county FSA office shall prepare and transmit to the state FSA office, by April 23, 1997, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) DAPDFO shall prepare, by April 23, 1997, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by April 30, 1997, forward all county reports, and DAPDFO shall, by April 30, 1997, forward its report of importer requests, to the Director, Cotton Division, AMS, STOP 0224, 1400 Independence Avenue, SW., Washington, D.C., 20250–0224.

(d) The Chief of the Research and Promotion Staff, Cotton Division, shall prepare a report of the requests received, including the number of eligible persons who requested the conduct of a referendum, and the number of ineligible persons who made requests, to the Director of the Cotton Division, and shall maintain one copy of the report where it will be available for public inspection for a period of 5 years following the end of the sign-up period.

(e) The Director of the Cotton Division shall prepare and submit to the Secretary a report of the results of the sign-up period. The Secretary will conduct a referendum if requested by 10 percent or more of the number of cotton producers and importers voting in the most recent (July 1991) referendum, but not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers in any one state or from importers of cotton. The Secretary shall announce the results of the sign-up period in a separate notice in the FEDERAL REGISTER.

§ 1205.30 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms consistent with the provisions of this subpart to govern conduct of the sign-up period.

Subpart—Cotton Research and Promotion Order

SOURCE: 31 FR 16758, Dec. 31, 1966, unless otherwise noted.

DEFINITIONS

§ 1205.301 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1205.302 Act.

Act means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2118; Public Law 89–502, 80 Stat 279, as amended).

[56 FR 64472, Dec. 10, 1991]

§ 1205.303 Person.

Person means any individual, partnership, corporation, association, or any other entity.

§ 1205.304 Cotton.

Cotton means:

(a) All Upland cotton harvested in the United States, and, except as used in §§ 1205.311 and 1205.335, includes cottonseed of such cotton and the products derived from such cotton and its seed, and

(b) Imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term ''cotton'' shall not, however, include:

(1) Any entry of imported cotton by an importer which has a value or weight less than a de minimis amount established in regulations issued by the Secretary and

(2) Industrial products as that term is defined by regulation.

[56 FR 64472, Dec. 10, 1991]

§ 1205.305 Upland cotton.

Upland cotton means all cultivated varieties of the species Gossypium hirsutum L.

[56 FR 64472, Dec. 10, 1991]

§ 1205.306 Bale.

Except as used in § 1205.322, *Bale* means the package of lint cotton produced at a cotton gin or the amount of processed cotton in a manufactured product that is equivalent to a 500 pound bale of lint cotton.

[56 FR 64472, Dec. 10, 1991]

§ 1205.307 Fiscal period.

Fiscal period is the 12-month budgetary period and means the calendar year unless the Cotton Board, with the approval of the Secretary, selects some other 12-months budgetary period.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.308 Cotton Board.

Cotton Board means the administrative body established pursuant to § 1205.318.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.309 Producer.

Producer means any person who shares in a cotton crop actually harvested on a farm, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.310 Importer.

Importer means many person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States, and the term *import* means any such entry.

[56 FR 64472, Dec. 10, 1991]

§ 1205.311 Handler.

Handler means any person who handles cotton, including the Commodity Credit Corporation.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.312 Handle.

Handle means to harvest, gin, warehouse, compress, purchase, market, transport, or otherwise acquire ownership or control of cotton.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.313 United States.

United States means the 50 States of the United States of America.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.314 Cotton-producing State

Cotton-producing State means each of the following States and combinations of States:

Alabama-Florida; Arizona; Arkansas; California-Nevada; Georgia; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina-Virginia; Oklahoma; South Carolina; Tennessee-Kentucky; Texas.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.315 Marketing.

Marketing includes the sale of cotton or the pledging of cotton to the Commodity Credit Corporation as collateral for a price support loan.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.316 Cotton-Producer organization.

Cotton-Producer organization means any organization which has been certified by the Secretary pursuant to § 1205.341.

[56 FR 64472, Dec. 10, 1991]

§ 1205.317 Cotton-Importer organization.

Cotton-Importer organization means any organization which has been certified by the Secretary pursuant to § 1205.342.

[56 FR 64472, Dec. 10, 1991]

§ 1205.318 Contracting organization or association.

Contracting organization or association means the organization or association with which the Cotton Board has entered into a contract or agreement pursuant to § 1205.328(c).

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.319 Cotton-producing region.

Cotton-producing region means each of the following groups of cotton-producing States:

(a) Southeast Region: Alabama-Florida, Georgia, North Carolina-Virginia, and South Carolina;

(b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky;

(c) Southwest Region: Oklahoma and Texas;

(d) Western Region: Arizona, California-Nevada, and New Mexico.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.320 Marketing year.

Marketing year means a consecutive 12-month period ending on July 31.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.321 Part and subpart.

Part means the cotton research and promotion order and all rules, regulations and supplemental orders issued pursuant to the act and the order, and the aforesaid order shall be a ''subpart'' of such part.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

COTTON BOARD

§ 1205.322 Establishment and membership.

(a) There is hereby established a Cotton Board composed of:

(1) Representatives of cotton producers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible producer organizations within a cotton-producing state, as certified pursuant to § 1205.341, or, if the Secretary determines that a substantial number of producers are not members of or their interests are not represented by any such eligible organizations, from nominations made by producers in a manner authorized by the Secretary, and

(2) Representatives of cotton importers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible importer organizations, as certified pursuant to § 1205.342, or, if the Secretary determines that a substantial number of importers are not members of or their interests are not represented by any such eligible organization, from nominations made by importers in a manner authorized by the Secretary.

(b) Representation on the Cotton Board shall be as follows:

(1) Each cotton-producing state shall have at least one member and an additional member for each 1 million bales or major fraction (more than half) thereof of cotton produced in the state and marketed above one million bales during the period specified in the regulations for determining Board membership; and

(2) Cotton importers shall be represented by an appropriate number of representatives, as determined by the Secretary, of importers of cotton subject to assessment during the period specified in the regulations for determining Board membership. That number shall not be less than two members. The initial importer representation on the Board shall consist of four representatives. The Secretary may, after

consultation with organizations representing importers, reduce or increase the number of importer representatives, in the manner prescribed by the Secretary.

[56 FR 64472, Dec. 10, 1991]

§ 1205.323 Term of office.

All members of the Board and their alternatives shall serve for terms of three years. Each member and alternate shall continue to serve until a successor is selected and has qualified.

[56 FR 64472, Dec. 10, 1991]

§ 1205.324 Nominations.

All nominations authorized under § 1205.322 shall be made within such a period of time and in such a manner as the Secretary shall prescribe. The eligible producer organizations within each cotton-producing state, as certified pursuant to § 1205.341, shall caucus for the purpose of jointly nominating two qualified persons for each member and each alternate member to be selected to represent the cotton producers of such cotton-producing state. The eligible importer organizations, as certified pursuant to § 1205.342, shall caucus for the purpose of jointly nominating two qualified persons for each member and alternate member to be selected to represent cotton importers. If joint agreement is not reached with respect to the nominees for any such position, each such organization may nominate two qualified persons for any position on which there is no agreement.

[56 FR 64472, Dec. 10, 1991; 56 FR 66670, Dec. 24, 1991]

§ 1205.325 Selection.

From the nominations made pursuant to §§ 1205.322 and 1205.324, the Secretary shall select the members of the Board and an alternate for each member on the basis of representation provided for in §§ 1205.322 and 1205.323.

[56 FR 64473, Dec. 10, 1991]

§ 1205.326 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the Board shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.327 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Board to qualify, or in the event of death, removal, resignation or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in §§ 1205.322, 1205.324 and 1205.325.

[56 FR 64473, Dec. 10, 1991]

§ 1205.328 Alternate members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of death, removal, resignation or disqualification of a member, the alternate for the member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the member's alternate are unable to attend a meeting, the Board may designate any other alternate member from the same cotton-producing state or region to serve in such member's place and stead of such meeting. In the event that both an importer member and the member's alternate are unable to attend a meeting, the Board may designate any other importer alternate member to serve in such member's place and stead at such meeting.

[56 FR 64473, Dec. 10, 1991]

§ 1205.329 Procedure.

A majority of the members of the Board, or alternates acting for members, shall constitute a quorum and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings all votes shall be cast in person. For routine and noncontroversial matters which do not require deliberation and the exchange of

views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telegraph or telephone, but any such action by telephone shall be confirmed promptly in writing.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.330 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.331 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) Subject to the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart including the designation of the handler, importer, or other person responsible for collecting the assessments authorized by § 1205.335, which designation may be of different handlers, importers, or other persons, or classes of handlers, importers, or other persons, to recognize differences in marketing practices or procedures in any state or area;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To recommend to the Secretary amendments to this subpart.

[31 FR 16758, Dec. 31, 1966, as amended at 42 FR 4813, Jan. 26, 1977. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

§ 1205.332 Duties.

The Board shall have the following duties:

(a) To select from among its members a chairman and such other officers as may be necessary for the conduct of its business, and to define their duties;

(b) To appoint or employ such persons as it may deem necessary and to determine the compensation and to define the duties of each;

(c) With the approval of the Secretary, to enter into contracts or agreements for the development and submission to it of research and promotion plans or projects authorized by § 1205.333, and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of costs thereof with funds collected pursuant to § 1205.335, with an organization or association whose governing body consists of cotton producers selected by the cotton-producer organizations certified by the Secretary under § 1205.341, in such manner that the producers of each cotton-producing state will, to the extent practicable, have representation on the governing body of such organization in the proportion that the cotton marketed by the producers of such state bears to the total marketed by the producers of all cotton-producing states. Any such contract or agreement shall provide that such contracting organization or association shall develop and submit annually to the Cotton Board, for the purpose of review and making recommendations to the Secretary, a program of research, advertising, and sales promotion projects, together with a budget, or budgets, which shall show the estimated cost to be incurred for such projects, and that any such projects shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting organization shall keep accurate records of all its transactions, which shall be available to the Secretary and Board on demand, and make an annual report to the Cotton Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

(d) To review and submit to the Secretary any research and promotion plans or projects which have been developed and submitted to it by the contracting organization or association, together with its recommendations

with respect to the approval thereof by the Secretary;

(e) To submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of advertising and promotion and research and development projects as estimated in the budget or budgets submitted to it by the contracting organization or association, with the Board's recommendations with respect thereto;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To cause its books to be audited by a competent public accountant at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit to the Secretary;

(h) To give the Secretary the same notice of meetings of the Board as is given to members in order that his representative may attend such meetings;

(i) To act as intermediary between the Secretary and any producer, importer, or handler.

(j) To submit to the Secretary such information as he may request.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

RESEARCH AND PROMOTION

§ 1205.333 Research and promotion.

The Cotton Board shall in the manner prescribed in § 1205.332(c) establish or provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for the advertising and sales promotion of cotton and its products, which plans or projects shall be directed toward increasing the general demand for cotton or its products in accordance with section 6(a) of the act;

(b) The establishment and carrying on of research and development projects and studies with respect to the production, ginning, processing, distribution, or utilization of cotton and its products in accordance with section 6(b) of the act, to the end that the marketing and utilization of cotton may be encouraged, expanded, improved, or made more efficient.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

EXPENSES AND ASSESSMENTS

§ 1205.334 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart.

(b) The Board shall reimburse the Secretary for:

(1) Expenses up to $300,000 incurred by the Secretary in connection with any referendum conducted under the Act and

(2) Expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The Board shall reimburse any agency of the United States Government that assists in administering the import provisions of the order for a reasonable amount of the expenses incurred by that agency in connection therewith.

(d) The funds to cover such expenses incurred under paragraphs (a), (b) and (c) of this section shall be paid from assessments received pursuant to § 1205.335.

[42 FR 4813, Jan. 26, 1977. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

§ 1205.335 Assessments.

(a) Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Secretary and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Secretary, assessments as prescribed in paragraphs (a) (1) and (2) of this section:

(1) An assessment at the rate of $1 per bale of cotton handled;

(2) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in the Cotton Board rules and regulations. The rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on:

(i) The current value of the cotton, or

(ii) An average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

(b) Each importer of cotton shall pay to the Cotton Board through the U.S. Customs Service, or in such other manner and at such times as prescribed by regulations issued by the Secretary, assessments as prescribed in paragraphs (b)(1) and (2) of this section:

(1) An assessment of $1 per bale of cotton imported or the bale equivalent thereof for cotton products.

(2) A supplemental assessment on each bale of cotton imported, or the bale equivalent thereof for cotton products, which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in the Cotton Board rules and regulations. The rate of the supplemental assessment on imported cotton shall be the same as that paid on cotton produced in the United States. The rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation the value of imported cotton based on an average of current and/or historical cotton prices.

(c) The Secretary may designate by regulation exemptions to assessments provided for in this section for the following:

(1) Entries of products designated by specific Harmonized Tariff Schedule numbers which the Secretary determines are composed of U.S. cotton or other than Upland cotton, and for;

(2) Cotton contained in entries of imported cotton and cotton products that is U.S. produced cotton or is other than Upland cotton.

(d) Assessments collected under this section are to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart.

[56 FR 64473, Dec. 10, 1991]

§ 1205.336 "Importer Reimbursements".

Any cotton importer against whose imports any assessment is made and collected under the authority of the Act who has reason to believe that such assessment or any portion of such assessment was made on U.S. produced cotton or cotton other than Upland cotton shall have the right to demand and receive from the Cotton Board a reimbursement of the assessment or portion of the assessment upon submission of proof satisfactory to the Board that the importer paid the assessment and that the cotton was produced in the U.S. or is other than Upland cotton. Any such demand shall be made by the importer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary. Such time periods shall provide the importer at least 90 days from the date of collection to submit the reimbursement form to the Board. Any such reimbursement shall be made within 60 days after demand therefor.

[56 FR 64474, Dec. 10, 1991]

§ 1205.337 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this subpart.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

REPORTS, BOOKS, AND RECORDS

§ 1205.338 Reports.

Each handler and importer subject to this subpart and importers of de minimis amounts of cotton may be required to report to the Cotton Board periodically such information as is required by regulations, which may include but not be limited to the following:

(a) Number of bales handled or imported;

(b) Number of bales on which an assessment was collected;

(c) Name and address of person from whom the handler has collected the assessments on each bale handled or imported;

(d) Date collection was made on each bale handled or imported.

[56 FR 64474, Dec. 10, 1991]

§ 1205.339 Books and records.

Each handler and importer subject to this subpart and importers of de minimis amounts of cotton shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

[56 FR 64474, Dec. 10, 1991]

§ 1205.340 Confidential treatment.

All information obtained from such books, records or reports shall be kept confidential by all officers and employees of the Department of Agriculture and of the Cotton Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this § 1205.340 shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart or importers of de minimis amounts of cotton, which statements do not identify the information furnished by any person, or

(b) The publication by the direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

[56 FR 64474, Dec. 10, 1991]

CERTIFICATION OF COTTON PRODUCER ORGANIZATION

§ 1205.341 Certification of cotton producer organization.

Any cotton producer organization within a cotton-producing State may request the Secretary for certification of eligibility to participate in nominating members and alternate members to represent such State on the Cotton Board. Such eligibility shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(a) Geographic territory within the State covered by the organization's active membership;

(b) Nature and size of the organization's active membership in the State, proportion of total of such active membership accounted for by farmers, a map showing the cotton-producing counties in such State in which the organization has members, the volume of cotton produced in each such county, the number of cotton producers in each such county, and the size of the organization's active cotton producer membership in each such county;

(c) The extent to which the cotton producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of the act.

The primary consideration in determining the eligibility of an organization shall be whether its cotton producer membership consists of a sufficiently large number of cotton producers who produce a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any cotton producer organization found eligible by the Secretary under this § 1205.341 will be certified by the Secretary, and the Secretary's determination as to eligibility is final.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64474, Dec. 10, 1991]

§ 1205.342 Certification of cotton importer organizations.

Any importer organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members to represent cotton importers on the Cotton Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(a) Nature and size of organization's active membership, proportion of total active membership accounted for by cotton importers and the total amount of cotton imported by the organization's cotton importer members;

(b) The extent to which the cotton importer membership of such organization is represented in setting the organization's policies;

(c) Evidence of stability and permanency of the organization;

(d) Sources from which the organization's operating funds are derived;

(e) Functions of the organization; and

(f) The organization's ability and willingness to further the aims and objectives of the Act.

The primary consideration in determining the eligibility of an organization shall be whether its membership consist of a sufficient large number of cotton importers who import a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any importer organization found eligible by the Secretary under this § 1205.342 will be certified by the Secretary, and the Secretary's determination as to eligibility is final.

[56 FR 64475, Dec. 10, 1991]

MISCELLANEOUS

§ 1205.343 Suspension and termination.

(a) The Secretary will, whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cotton producers and importers (if subject to the Order) voting in the most recent referendum, to determine whether cotton producers and importers subject to the Order favor the suspension or termination of this subpart, except that in counting such request for a referendum, not more than 20 percent of such request may be from producers from any one state or importers of cotton (if subject to the Order). The Secretary shall suspend or terminate such subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers subject to the Order voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of cotton, and who produced and imported more than 50 percent of the volume of cotton produced and imported by those voting in the referendum.

[56 FR 64474, Dec. 10, 1991]

§ 1205.345 Proceedings after termination.

(a) Upon the termination of this subpart the Cotton Board shall recommend not more than five of its members to the Secretary to serve as trustees, for the purpose of liquidating the affairs of the Cotton Board. Such

persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall—

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Cotton Board under any contracts or agreements entered into by it pursuant to § 1205.332 (c);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all funds, property and claims vested in the Board or the trustees pursuant to this § 1205.345.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to this § 1205.345 shall be subject to the same obligation imposed upon the Cotton Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the cotton research or promotion programs hitherto authorized.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64475, Dec. 10, 1991]

§ 1205.346 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder, or (b) release or extinguish any violation of this subpart or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.347 Personal liability.

No member or alternate member of the Cotton Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.348 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

Subpart—Members of Cotton Board

§ 1205.401 Definitions.

(a) *Cotton Division*. *Cotton Division* means the Cotton Division of the Agricultural Marketing Service of the U.S. Department of Agriculture.

(b) *Director*. *Director* means the Director of the Cotton Division.

[32 FR 1084, Jan. 31, 1967, as amended at 41 FR 37092, Sept. 2, 1976]

§ 1205.402 Determination of Cotton Board membership.

(a) In determining whether any cotton-producing state is entitled to be represented by more than one member of the Cotton Board as provided in § 1205.322, average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years will be used as

the criteria for determination of such additional members.

(b) In determining whether importers of cotton and cotton-containing products are entitled to be represented by more than a minimum of two members on the Cotton Board as provided in § 1205.322, the average annual volume of imported cotton and the cotton content of imported products on which assessments have been collected will be used as the criteria for determination of such additional members. This volume of cotton will be expressed in terms of 480-pound net weight bales for the five most recent calendar years. The initial importer representation on the Board shall consist of four importer representatives.

(c) All members appointed from a state will be entitled to serve a full three-year term even though it is determined in a subsequent year that a state should have fewer additional members by using the average production of the five most recent marketing years as specified in paragraph (a) of this section.

(d) All members appointed to represent importers will be entitled to serve a full three-year term even though it is determined in a subsequent year that importers should be represented by fewer additional members by using the average volume of imports of cotton and the cotton content of products on which assessments have been collected as specified in paragraph (b) of this section.

(e) Each year the Director shall:

(1) Based on the average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years, notify all certified cotton producer organizations in each cotton-producing state of the number of vacancies to be filled by cotton producers on the Cotton Board; and

(2) Based on the average annual volume of imports of cotton and the cotton content of cotton-containing products on which assessments as provided for in § 1205.335 have been collected in terms of 480-pound net weight bales for the five most recent calendar years, notify all certified cotton importer organizations of the number of vacancies to be filled by cotton importers on the Cotton Board.

[56 FR 65980, Dec. 20, 1991]

§ 1205.403 Nomination procedure.

(a) The Director shall notify all certified producer organizations within each cotton-producing state and all certified importer organizations of the location, date, and time of the caucus for nominating producer and importer representatives for the Cotton Board as specified in § 1205.324. The Director will designate a representative from the Cotton Division to attend the caucus meeting of cotton producer organizations in each state, and of cotton importer organizations. Each eligible cotton producer organization within each cotton-producing state and each importer organization will be entitled to only one representative at the caucus for the purpose of nominating two qualified persons for each member and for each alternate member to be selected. The representative of a cotton producer organization shall be a cotton producer and resident of such state, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. The representative of an importer organization shall be an importer of cotton and/or products containing cotton, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. The representative of the Director designated to attend the caucus meeting of cotton producer organizations in each state and of cotton importer organizations will ascertain the qualifications and eligibility of each representative of a cotton producer organization or cotton importer organization to participate in said meeting and to make nominations.

(b) Each caucus will be conducted as follows:

(1) The representative from the Cotton Division will act as temporary chairperson and will explain the procedure for nominations and the duties of the Cotton Board;

(2) The representatives in attendance from the certified organizations will

then select a chairperson and secretary;

(3) At each caucus there will be presented for nomination and there will be nominated not less than the number of nominees required under the provisions of §§ 1205.322, 1205.324, and 1205.402.

[56 FR 65981, Dec. 20, 1991]

Subpart—Cotton Board Rules and Regulations

SOURCE: 42 FR 35974, July 13, 1977, unless otherwise noted.

DEFINITIONS

§ 1205.500 Terms defined.

As used throughout this subpart, unless the context otherwise requires, the following terms shall mean:

(a) *ASCS* means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) *Cotton Board* means the administrative body established pursuant to the Cotton Research and Promotion Order.

(c) *CCC* means the Commodity Credit Corporation.

(d) *Current value of Cotton* means the gross price per pound of lint cotton received by the producer for cotton as shown on the producers' settlement document before deductions are made for weight penalties, buyer's commission or brokerage fees, marketing fees, the $1 per bale cotton research and promotion assessment, picking charges, ginning charges, warehouse receiving charges, warehouse storage charges, transportation charges or any other charges, plus any amount received by a producer in the form of a loan deficiency payment with respect to such cotton.

(e) *Form A* means Cotton Producer's Note, Form CCC Cotton A.

(f) *Gin code number* means the identification number assigned to each cotton gin by the Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture.

(g) *Handle* means to harvest, gin, warehouse, compress, purchase, market, transport, or otherwise acquire ownership or control of cotton.

(h) *Handler* means any person who handles cotton, including CCC.

(i) *Marketing* means any sale of cotton, or the pledging of cotton to CCC as collateral for a price support loan.

(j) *Marketing year* means a consecutive 12-month period ending on July 31.

(k) *Person* means any individual, partnership, corporation, association, or any other entity, whether governmental or private.

(l) *Producer* means any person who owns or shares in a cotton crop (or in the proceeds thereof) as landowner, landlord, tenant, or sharecropper.

(m) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(n) *Loan deficiency payment* means any payment on Upland cotton made by the Commodity Credit Corporation to a producer in accordance with 7 CFR 713.55.

(o) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States and *import* means any such entry.

(p) *Customs Service* means the United States Customs Service of the United States Department of Treasury.

(q) *Cotton* means:

(1) All Upland cotton harvested in the United States, and, except as used in section 7(e) of the Act, includes cottonseed of such cotton and the products derived from such cotton and its seed, and

(2) Imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term *cotton* shall not, however, include:

(i) Any entry of imported cotton by an importer which has a value or weight less than a de minimis amount established in regulations issued by the Secretary and

(ii) Industrial products as that term is defined by regulation.

(r) *Industrial products* means cotton-containing products which are classified in the Harmonized Tariff Schedule of the United States under classifications other than textile classifications.

Certain cotton-containing textile products under textile classifications shall also be considered to be industrial products, and are therefore not included in the table appearing in these regulations as products subject to assessment. Such products include, but are not limited to textile fabrics coated, impregnated, covered, or laminated, with other materials, textile piping and tubing, and belting materials.

[42 FR 35974, July 13, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 51 FR 6098, Feb. 20, 1986; 51 FR 37705, Oct. 24, 1986; 57 FR 29185, July 1, 1992]

GENERAL

§ 1205.505 Communication.

All reports, requests, applications for reimbursements, and communications in connection with the Cotton Research and Promotion Order shall be addressed as follows: Cotton Board, Post Office Box 2121, Memphis, Tennessee, 38101–2121.

[57 FR 29186, July 1, 1992]

ASSESSMENTS

§ 1205.510 Levy of assessments.

(a) *Producer assessments.* An assessment of $1 per bale for cotton research and promotion is hereby levied on each bale of Upland cotton that is produced from cotton harvested and ginned except cotton consumed by any governmental agency from its own production. Such assessment shall be payable and collected only once on each bale.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (a) of this section, is hereby levied on each bale of Upland cotton harvested and ginned except cotton consumed by any governmental agency from its own production. The supplemental assessment rate shall be levied at the rate of five-tenths of one percent of:

(i) The current value of the cotton multiplied by the number of pounds of lint cotton or;

(ii) The current value of the cotton converted to a fixed amount per bale as reflected in the following assessment chart:

ASSESSMENT CHART [1]

Current value (cents per pound)	Supplemental Assessment, dollars per bale
.00 to 9.99	0.15
10.00 to 19.99	.40
20.00 to 29.99	.65
30.00 to 39.99	.90
40.00 to 49.99	1.15
50.00 to 59.99	1.40
60.00 to 69.99	1.65
70.00 to 79.99	1.90
80.00 to 89.99	2.15
90.00 to 99.99	2.40
100.00 to 109.99	2.65
110.00 to 119.99	2.90

[1] Assessment is calculated on 5/10 of 1 percent of the midpoint of each 10¢ increment, based on a 500 lb. bale and converted to a fixed amount per bale.

(2) Each marketing year the collecting handler must select one of the two options for collecting the supplemental assessment as provided in paragraph (a)(1) of this section. The handler shall notify the Cotton Board as to the method selected at the time the handler files the first handler report each marketing year.

(b) *Importer assessment.* An assessment for cotton research and promotion of $1 per bale is hereby levied on each bale of cotton, or the bale equivalent thereof for cotton in cotton-containing products identified in the HTS conversion factor table in paragraph (b)(3) of this section and imported into the United States on or after July 31, 1992. The $1 per bale assessment shall be converted to a fixed amount per kilogram to facilitate the U.S. Customs Service in collecting this assessment.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (b) of this section is hereby levied on each bale of cotton or bale equivalent of cotton in cotton-containing products, identified in this subpart, imported into the United States on or after July 31, 1992. The supplemental assessment shall be levied at the rate of five-tenths of one percent of the historical value of cotton as determined by the Secretary and expressed in paragraph (b)(2) of this section. The rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States. The

supplemental assessment will be calculated as a fixed amount per kilogram and added to the $1 per bale or bale equivalent assessment to facilitate the Customs Service in collecting assessments.

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $0.9833 per kilogram.

(3) The following table contains Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the following table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed.

(i) Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein results in the calculation of an assessment of two dollars ($2.00) or less will not be subject to assessments as described in this section.

(ii) In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the physical properties, description, or cotton content of the product involved, assessments will continue to be collected based on the new number.

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	0.9833
5201001200	0	0.9833
5201001400	0	0.9833
5201001800	0	0.9833
5201002200	0	0.9833
5201002400	0	0.9833

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5201002800	0	0.9833
5201003400	0	0.9833
5201003800	0	0.9833
5204110000	1.1111	1.0925
5204200000	1.1111	1.0925
5205111000	1.1111	1.0925
5205112000	1.1111	1.0925
5205121000	1.1111	1.0925
5205122000	1.1111	1.0925
5205131000	1.1111	1.0925
5205132000	1.1111	1.0925
5205141000	1.1111	1.0925
5205210020	1.1111	1.0925
5205210090	1.1111	1.0925
5205220020	1.1111	1.0925
5205220090	1.1111	1.0925
5205230020	1.1111	1.0925
5205230090	1.1111	1.0925
5205240020	1.1111	1.0925
5205240090	1.1111	1.0925
5205310000	1.1111	1.0925
5205320000	1.1111	1.0925
5205330000	1.1111	1.0925
5205340000	1.1111	1.0925
5205410020	1.1111	1.0925
5205410090	1.1111	1.0925
5205420020	1.1111	1.0925
5205420090	1.1111	1.0925
5205440020	1.1111	1.0925
5205440090	1.1111	1.0925
5206120000	0.5556	0.5463
5206130000	0.5556	0.5463
5206140000	0.5556	0.5463
5206220000	0.5556	0.5463
5206230000	0.5556	0.5463
5206240000	0.5556	0.5463
5206310000	0.5556	0.5463
5207100000	1.1111	1.0925
5207900000	0.5556	0.5463
5208112020	1.1455	1.1264
5208112040	1.1455	1.1264
5208112090	1.1455	1.1264
5208114020	1.1455	1.1264
5208114060	1.1455	1.1264
5208114090	1.1455	1.1264
5208118090	1.1455	1.1264
5208124020	1.1455	1.1264
5208124040	1.1455	1.1264
5208124090	1.1455	1.1264
5208126020	1.1455	1.1264
5208126040	1.1455	1.1264
5208126060	1.1455	1.1264
5208126090	1.1455	1.1264
5208128020	1.1455	1.1264
5208128090	1.1455	1.1264
5208130000	1.1455	1.1264
5208192020	1.1455	1.1264
5208192090	1.1455	1.1264
5208194020	1.1455	1.1264
5208194090	1.1455	1.1264
5208196020	1.1455	1.1264
5208196090	1.1455	1.1264
5208224040	1.1455	1.1264
5208224090	1.1455	1.1264
5208226020	1.1455	1.1264
5208226060	1.1455	1.1264
5208228020	1.1455	1.1264
5208230000	1.1455	1.1264
5208292020	1.1455	1.1264
5208292090	1.1455	1.1264
5208294090	1.1455	1.1264

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5208296090	1.1455	1.1264
5208298020	1.1455	1.1264
5208312000	1.1455	1.1264
5208321000	1.1455	1.1264
5208323020	1.1455	1.1264
5208323040	1.1455	1.1264
5208323090	1.1455	1.1264
5208324020	1.1455	1.1264
5208324040	1.1455	1.1264
5208325020	1.1455	1.1264
5208330000	1.1455	1.1264
5208392020	1.1455	1.1264
5208392090	1.1455	1.1264
5208394090	1.1455	1.1264
5208396090	1.1455	1.1264
5208398020	1.1455	1.1264
5208412000	1.1455	1.1264
5208416000	1.1455	1.1264
5208418000	1.1455	1.1264
5208421000	1.1455	1.1264
5208423000	1.1455	1.1264
5208424000	1.1455	1.1264
5208425000	1.1455	1.1264
5208430000	1.1455	1.1264
5208492000	1.1455	1.1264
5208494020	1.1455	1.1264
5208494090	1.1455	1.1264
5208496010	1.1455	1.1264
5208496090	1.1455	1.1264
5208498090	1.1455	1.1264
5208512000	1.1455	1.1264
5208516060	1.1455	1.1264
5208518090	1.1455	1.1264
5208523020	1.1455	1.1264
5208523045	1.1455	1.1264
5208523090	1.1455	1.1264
5208524020	1.1455	1.1264
5208524045	1.1455	1.1264
5208524065	1.1455	1.1264
5208525020	1.1455	1.1264
5208530000	1.1455	1.1264
5208592025	1.1455	1.1264
5208592095	1.1455	1.1264
5208594090	1.1455	1.1264
5208596090	1.1455	1.1264
5209110020	1.1455	1.1264
5209110035	1.1455	1.1264
5209110090	1.1455	1.1264
5209120020	1.1455	1.1264
5209120040	1.1455	1.1264
5209190020	1.1455	1.1264
5209190040	1.1455	1.1264
5209190060	1.1455	1.1264
5209190090	1.1455	1.1264
5209210090	1.1455	1.1264
5209220020	1.1455	1.1264
5209220040	1.1455	1.1264
5209290040	1.1455	1.1264
5209290090	1.1455	1.1264
5209313000	1.1455	1.1264
5209316020	1.1455	1.1264
5209316035	1.1455	1.1264
5209316050	1.1455	1.1264
5209316090	1.1455	1.1264
5209320020	1.1455	1.1264
5209320040	1.1455	1.1264
5209390020	1.1455	1.1264
5209390040	1.1455	1.1264
5209390060	1.1455	1.1264
5209390080	1.1455	1.1264
5209390090	1.1455	1.1264

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5209413000	1.1455	1.1264
5209416020	1.1455	1.1264
5209416040	1.1455	1.1264
5209420020	1.0309	1.0137
5209420040	1.0309	1.0137
5209430030	1.1455	1.1264
5209430050	1.1455	1.1264
5209490020	1.1455	1.1264
5209490090	1.1455	1.1264
5209516035	1.1455	1.1264
5209516050	1.1455	1.1264
5209520020	1.1455	1.1264
5209590025	1.1455	1.1264
5209590040	1.1455	1.1264
5209590090	1.1455	1.1264
5210114020	0.6873	0.6758
5210114040	0.6873	0.6758
5210116020	0.6873	0.6758
5210116040	0.6873	0.6758
5210116060	0.6873	0.6758
5210118020	0.6873	0.6758
5210120000	0.6873	0.6758
5210192090	0.6873	0.6758
5210214040	0.6873	0.6758
5210216020	0.6873	0.6758
5210216060	0.6873	0.6758
5210218020	0.6873	0.6758
5210314020	0.6873	0.6758
5210314040	0.6873	0.6758
5210316020	0.6873	0.6758
5210318020	0.6873	0.6758
5210414000	0.6873	0.6758
5210416000	0.6873	0.6758
5210418000	0.6873	0.6758
5210498090	0.6873	0.6758
5210514040	0.6873	0.6758
5210516020	0.6873	0.6758
5210516040	0.6873	0.6758
5210516060	0.6873	0.6758
5211110090	0.6873	0.6758
5211120020	0.6873	0.6758
5211190020	0.6873	0.6758
5211190060	0.6873	0.6758
5211210025	0.6873	0.6758
5211210035	0.4165	0.4095
5211210050	0.6873	0.6758
5211290090	0.6873	0.6758
5211320020	0.6873	0.6758
5211390040	0.6873	0.6758
5211390060	0.6873	0.6758
5211490020	0.6873	0.6758
5211490090	0.6873	0.6758
5211590025	0.6873	0.6758
5212146090	0.9164	0.9011
5212156020	0.9164	0.9011
5212216090	0.9164	0.9011
5509530030	0.5556	0.5463
5509530060	0.5556	0.5463
5513110020	0.4009	0.3942
5513110040	0.4009	0.3942
5513110060	0.4009	0.3942
5513110090	0.4009	0.3942
5513120000	0.4009	0.3942
5513130020	0.4009	0.3942
5513210020	0.4009	0.3942
5513310000	0.4009	0.3942
5514120020	0.4009	0.3942
5516420060	0.4009	0.3942
5516910060	0.4009	0.3942
5516930090	0.4009	0.3942
5601210010	1.1455	1.1264

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5601210090	1.1455	1.1264
5601300000	1.1455	1.1264
5602109090	0.5727	0.5631
5602290000	1.1455	1.1264
5602906000	0.526	0.5172
5604900000	0.5556	0.5463
5607902000	0.8889	0.8741
5608901000	1.1111	1.0925
5608902300	1.1111	1.0925
5609001000	1.1111	1.0925
5609004000	0.5556	0.5463
5701104000	0.0556	0.055
5701109000	0.1111	0.1092
5701901010	1.0444	1.027
5702109020	1.1	1.0816
5702312000	0.0778	0.077
5702411000	0.0722	0.071
5702412000	0.0778	0.077
5702421000	0.0778	0.077
5702913000	0.0889	0.087
5702991010	1.1111	1.0925
5702991090	1.1111	1.0925
5703900000	0.4489	0.4414
5801210000	1.1455	1.1264
5801230000	1.1455	1.1264
5801250010	1.1455	1.1264
5801250020	1.1455	1.1264
5801260020	1.1455	1.1264
5802190000	1.1455	1.1264
5802300030	0.5727	0.5631
5804291000	1.1455	1.1264
5806200010	0.3534	0.3475
5806200090	0.3534	0.3475
5806310000	1.1455	1.1264
5806400000	0.4296	0.4224
5808107000	0.5727	0.5631
5808900010	0.5727	0.5631
5811002000	1.1455	1.1264
6001106000	1.1455	1.1264
6001210000	0.8591	0.8448
6001220000	0.2864	0.2816
6001910010	0.8591	0.8448
6001910020	0.8591	0.8448
6001920020	0.2864	0.2816
6001920030	0.2864	0.2816
6001920040	0.2864	0.2816
6002203000	0.8681	0.8536
6002206000	0.2894	0.2846
6002420000	0.8681	0.8536
6002430010	0.2894	0.2846
6002430080	0.2894	0.2846
6002921000	1.1574	1.1381
6002930040	0.1157	0.1138
6002930080	0.1157	0.1138
6101200010	1.0094	0.9925
6101200020	1.0094	0.9925
6102200010	1.0094	0.9925
6102200020	1.0094	0.9925
6103421020	0.8806	0.8659
6103421040	0.8806	0.8659
6103421050	0.8806	0.8659
6103421070	0.8806	0.8659
6103431520	0.2516	0.2474
6103431540	0.2516	0.2474
6103431550	0.2516	0.2474
6103431570	0.2516	0.2474
6104220040	0.9002	0.8852
6104220060	0.9002	0.8852
6104320000	0.9207	0.9053
6104420010	0.9002	0.8852
6104420020	0.9002	0.8852

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6104520010	0.9312	0.9156
6104520020	0.9312	0.9156
6104622006	0.8806	0.8659
6104622011	0.8806	0.8659
6104622016	0.8806	0.8659
6104622021	0.8806	0.8659
6104622026	0.8806	0.8659
6104622028	0.8806	0.8659
6104622030	0.8806	0.8659
6104622060	0.8806	0.8659
6104632006	0.3774	0.3711
6104632011	0.3774	0.3711
6104632026	0.3774	0.3711
6104632028	0.3774	0.3711
6104632030	0.3774	0.3711
6104632060	0.3774	0.3711
6104692030	0.3858	0.3794
6105100010	0.985	0.9686
6105100020	0.985	0.9686
6105100030	0.985	0.9686
6105202010	0.3078	0.3027
6105202030	0.3078	0.3027
6106100010	0.985	0.9686
6106100020	0.985	0.9686
6106100030	0.985	0.9686
6106202010	0.3078	0.3027
6106202030	0.3078	0.3027
6107110010	1.1322	1.1133
6107110020	1.1322	1.1133
6107120010	0.5032	0.4948
6107210010	0.8806	0.8659
6107220015	0.3774	0.3711
6107220025	0.3774	0.3711
6107910040	1.2581	1.2371
6108210010	1.2445	1.2237
6108210020	1.2445	1.2237
6108310010	1.1201	1.1014
6108310020	1.1201	1.1014
6108320010	0.2489	0.2447
6108320015	0.2489	0.2447
6108320025	0.2489	0.2447
6108910005	1.2445	1.2237
6108910015	1.2445	1.2237
6108910025	1.2445	1.2237
6108910030	1.2445	1.2237
6108920030	0.2489	0.2447
6109100005	0.9956	0.979
6109100007	0.9956	0.979
6109100009	0.9956	0.979
6109100012	0.9956	0.979
6109100014	0.9956	0.979
6109100018	0.9956	0.979
6109100023	0.9956	0.979
6109100027	0.9956	0.979
6109100037	0.9956	0.979
6109100040	0.9956	0.979
6109100045	0.9956	0.979
6109100060	0.9956	0.979
6109100065	0.9956	0.979
6109100070	0.9956	0.979
6109901007	0.3111	0.3059
6109901009	0.3111	0.3059
6109901049	0.3111	0.3059
6109901050	0.3111	0.3059
6109901060	0.3111	0.3059
6109901065	0.3111	0.3059
6109901090	0.3111	0.3059
6110202005	1.1837	1.1639
6110202010	1.1837	1.1639
6110202015	1.1837	1.1639
6110202020	1.1837	1.1639

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6110202025	1.1837	1.1639
6110202030	1.1837	1.1639
6110202035	1.1837	1.1639
6110202040	1.1574	1.1381
6110202045	1.1574	1.1381
6110202065	1.1574	1.1381
6110202075	1.1574	1.1381
6110909022	0.263	0.2586
6110909024	0.263	0.2586
6110909030	0.3946	0.388
6110909040	0.263	0.2586
6110909042	0.263	0.2586
6111201000	1.2581	1.2371
6111202000	1.2581	1.2371
6111203000	1.0064	0.9896
6111205000	1.0064	0.9896
6111206010	1.0064	0.9896
6111206020	1.0064	0.9896
6111206030	1.0064	0.9896
6111206040	1.0064	0.9896
6111305020	0.2516	0.2474
6111305040	0.2516	0.2474
6112110050	0.7548	0.7422
6112120010	0.2516	0.2474
6112120030	0.2516	0.2474
6112120040	0.2516	0.2474
6112120050	0.2516	0.2474
6112120060	0.2516	0.2474
6112390010	1.1322	1.1133
6112490010	0.9435	0.9277
6114200005	0.9002	0.8852
6114200010	0.9002	0.8852
6114200015	0.9002	0.8852
6114200020	1.286	1.2645
6114200040	0.9002	0.8852
6114200046	0.9002	0.8852
6114200052	0.9002	0.8852
6114200060	0.9002	0.8852
6114301010	0.2572	0.2529
6114301020	0.2572	0.2529
6114303030	0.2572	0.2529
6115198010	1.0417	1.0243
6115929000	1.0417	1.0243
6115936020	0.2315	0.2276
6116101300	0.3655	0.3594
6116101720	0.8528	0.8386
6116926420	1.0965	1.0782
6116926430	1.2183	1.198
6116926440	1.0965	1.0782
6116928800	1.0965	1.0782
6117809510	0.9747	0.9584
6117809540	0.3655	0.3594
6201121000	0.948	0.9322
6201122010	0.8953	0.8803
6201122050	0.6847	0.6733
6201122060	0.6847	0.6733
6201134030	0.2633	0.2589
6201921000	0.9267	0.9112
6201921500	1.1583	1.139
6201922010	1.0296	1.0124
6201922021	1.2871	1.2656
6201922031	1.2871	1.2656
6201922041	1.2871	1.2656
6201922051	1.0296	1.0124
6201922061	1.0296	1.0124
6201931000	0.3089	0.3037
6201933511	0.2574	0.2531
6201933521	0.2574	0.2531
6201999060	0.2574	0.2531
6202121000	0.9372	0.9215
6202122010	1.1064	1.0879

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6202122025	1.3017	1.28
6202122050	0.8461	0.832
6202122060	0.8461	0.832
6202134005	0.2664	0.262
6202134020	0.333	0.3274
6202921000	1.0413	1.0239
6202921500	1.0413	1.0239
6202922026	1.3017	1.28
6202922061	1.0413	1.0239
6202922071	1.0413	1.0239
6202931000	0.3124	0.3072
6202935011	0.2603	0.256
6202935021	0.2603	0.256
6203122010	0.1302	0.128
6203221000	1.3017	1.28
6203322010	1.2366	1.2159
6203322040	1.2366	1.2159
6203332010	0.1302	0.128
6203392010	1.1715	1.1519
6203399060	0.2603	0.256
6203422010	0.9961	0.9795
6203422025	0.9961	0.9795
6203422050	0.9961	0.9795
6203422090	0.9961	0.9795
6203424005	1.2451	1.2243
6203424010	1.2451	1.2243
6203424015	0.9961	0.9795
6203424020	1.2451	1.2243
6203424025	1.2451	1.2243
6203424030	1.2451	1.2243
6203424035	1.2451	1.2243
6203424040	0.9961	0.9795
6203424045	0.9961	0.9795
6203424050	0.9238	0.9084
6203424055	0.9238	0.9084
6203424060	0.9238	0.9084
6203431500	0.1245	0.1224
6203434010	0.1232	0.1211
6203434020	0.1232	0.1211
6203434030	0.1232	0.1211
6203434040	0.1232	0.1211
6203498045	0.249	0.2448
6204132010	0.1302	0.128
6204192000	0.1302	0.128
6204198090	0.2603	0.256
6204221000	1.3017	1.28
6204223030	1.0413	1.0239
6204223040	1.0413	1.0239
6204223050	1.0413	1.0239
6204223060	1.0413	1.0239
6204223065	1.0413	1.0239
6204292040	0.3254	0.32
6204322010	1.2366	1.2159
6204322030	1.0413	1.0239
6204322040	1.0413	1.0239
6204423010	1.2728	1.2515
6204423030	0.9546	0.9387
6204423040	0.9546	0.9387
6204423050	0.9546	0.9387
6204423060	0.9546	0.9387
6204522010	1.2654	1.2443
6204522030	1.2654	1.2443
6204522040	1.2654	1.2443
6204522070	1.0656	1.0478
6204522080	1.0656	1.0478
6204533010	0.2664	0.262
6204594060	0.2664	0.262
6204622010	0.9961	0.9795
6204622025	0.9961	0.9795
6204622050	0.9961	0.9795
6204624005	1.2451	1.2243

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6204624010	1.2451	1.2243
6204624020	0.9961	0.9795
6204624025	1.2451	1.2243
6204624030	1.2451	1.2243
6204624035	1.2451	1.2243
6204624040	1.2451	1.2243
6204624045	0.9961	0.9795
6204624050	0.9961	0.9795
6204624055	0.9854	0.9689
6204624060	0.9854	0.9689
6204624065	0.9854	0.9689
6204633510	0.2546	0.2503
6204633530	0.2546	0.2503
6204633532	0.2437	0.2396
6204633540	0.2437	0.2396
6204692510	0.249	0.2448
6204692540	0.2437	0.2396
6204699044	0.249	0.2448
6204699046	0.249	0.2448
6204699050	0.249	0.2448
6205202015	0.9961	0.9795
6205202020	0.9961	0.9795
6205202025	0.9961	0.9795
6205202030	0.9961	0.9795
6205202035	1.1206	1.1019
6205202046	0.9961	0.9795
6205202050	0.9961	0.9795
6205202060	0.9961	0.9795
6205202065	0.9961	0.9795
6205202070	0.9961	0.9795
6205202075	0.9961	0.9795
6205302010	0.3113	0.3061
6205302030	0.3113	0.3061
6205302040	0.3113	0.3061
6205302050	0.3113	0.3061
6205302070	0.3113	0.3061
6205302080	0.3113	0.3061
6206100040	0.1245	0.1224
6206303010	0.9961	0.9795
6206303020	0.9961	0.9795
6206303030	0.9961	0.9795
6206303040	0.9961	0.9795
6206303050	0.9961	0.9795
6206303060	0.9961	0.9795
6206403010	0.3113	0.3061
6206403030	0.3113	0.3061
6206900040	0.249	0.2448
6207110000	1.0852	1.0671
6207199010	0.3617	0.3557
6207210010	1.1085	1.09
6207210030	1.1085	1.09
6207220000	0.3695	0.3633
6207911000	1.1455	1.1264
6207913010	1.1455	1.1264
6207913020	1.1455	1.1264
6208210010	1.0583	1.0406
6208210020	1.0583	1.0406
6208220000	0.1245	0.1224
6208911010	1.1455	1.1264
6208911020	1.1455	1.1264
6208913010	1.1455	1.1264
6209201000	1.1577	1.1384
6209203000	0.9749	0.9586
6209205030	0.9749	0.9586
6209205035	0.9749	0.9586
6209205040	1.2186	1.1982
6209205045	0.9749	0.9586
6209205050	0.9749	0.9586
6209303020	0.2463	0.2422
6209303040	0.2463	0.2422
6210109010	0.2291	0.2253

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6210403000	0.0391	0.038
6210405020	0.4556	0.448
6211111010	0.1273	0.1252
6211111020	0.1273	0.1252
6211118010	1.1455	1.1264
6211118020	1.1455	1.1264
6211320007	0.8461	0.832
6211320010	1.0413	1.0239
6211320015	1.0413	1.0239
6211320030	0.9763	0.96
6211320060	0.9763	0.96
6211320070	0.9763	0.96
6211330010	0.3254	0.32
6211330030	0.3905	0.384
6211330035	0.3905	0.384
6211330040	0.3905	0.384
6211420010	1.0413	1.0239
6211420020	1.0413	1.0239
6211420025	1.1715	1.1519
6211420060	1.0413	1.0239
6211420070	1.1715	1.1519
6211430010	0.2603	0.256
6211430030	0.2603	0.256
6211430040	0.2603	0.256
6211430050	0.2603	0.256
6211430060	0.2603	0.256
6211430066	0.2603	0.256
6212105020	0.2412	0.2372
6212109010	0.9646	0.9485
6212109020	0.2412	0.2372
6212200020	0.3014	0.2964
6212900030	0.1929	0.1897
6213201000	1.1809	1.1612
6213202000	1.0628	1.0451
6213901000	0.4724	0.4645
6214900010	0.9043	0.8892
6216000800	0.2351	0.2312
6216001720	0.6752	0.6639
6216003800	1.2058	1.1857
6216004100	1.2058	1.1857
6217109510	1.0182	1.0012
6217109530	0.2546	0.2503
6301300010	0.8766	0.862
6301300020	0.8766	0.862
6302100005	1.1689	1.1494
6302100008	1.1689	1.1494
6302100015	1.1689	1.1494
6302215010	0.8182	0.8045
6302215020	0.8182	0.8045
6302217010	1.1689	1.1494
6302217020	1.1689	1.1494
6302217050	1.1689	1.1494
6302219010	0.8182	0.8045
6302219020	0.8182	0.8045
6302219050	0.8182	0.8045
6302222010	0.4091	0.4023
6302222020	0.4091	0.4023
6302313010	0.8182	0.8045
6302313050	1.1689	1.1494
6302315050	0.8182	0.8045
6302317010	1.1689	1.1494
6302317020	1.1689	1.1494
6302317040	1.1689	1.1494
6302317050	1.1689	1.1494
6302319010	0.8182	0.8045
6302319040	0.8182	0.8045
6302319050	0.8182	0.8045
6302322020	0.4091	0.4023
6302322040	0.4091	0.4023
6302402010	0.9935	0.9769
6302511000	0.5844	0.5746

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6302512000	0.8766	0.862
6302513000	0.5844	0.5746
6302514000	0.8182	0.8045
6302600010	1.1689	1.1494
6302600020	1.052	1.0344
6302600030	1.052	1.0344
6302910005	1.052	1.0344
6302910015	1.1689	1.1494
6302910025	1.052	1.0344
6302910035	1.052	1.0344
6302910045	1.052	1.0344
6302910050	1.052	1.0344
6302910060	1.052	1.0344
6303110000	0.9448	0.929
6303910000	0.6429	0.6322
6304111000	1.0629	1.0451
6304190500	1.052	1.0344
6304191000	1.1689	1.1494
6304191500	0.4091	0.4023
6304192000	0.4091	0.4023
6304910020	0.9351	0.9195
6304920000	0.9351	0.9195
6505901540	0.181	0.178
6505902060	0.9935	0.9769
6505902545	0.5844	0.5746

(4) Any entry of cotton that qualifies for informal entry according to regulations issued by the Customs Service will not be subject to the assessment.

(5) Imported textile and apparel articles assembled of components formed from cotton produced in the Unites States and identified by HTS numbers 9819.11.03, 9819.11.06, 9820.11.03, 9820.11.06, 9820.11.09, 9820.11.12, 9820.11.18, 9820.11.21, 9802.00.8015, 9802.00.9000, 9802.00.8044, or 9802.00.8046 shall not subject to assessment.

(6) Imported cotton and products may be exempted by the Cotton Board from assessment under this paragraph. Such imported cotton and products may include, but are not limited to cotton and the cotton content of products which is U.S. produced cotton, or cotton other than Upland cotton.

(i) A request for such exemption must be submitted to the Cotton Board by the importer, prior to the importation of the cotton product. The Cotton Board will then issue, if deemed appropriate, a numbered exemption certificate valid for 1 year from the date of issue. The exemption number should be entered by the importer on the Customs entry documentation in the appropriate location as determined by the U.S. Customs Service.

(ii) The request for exemption should include:

(A) the name, address, and importer identification number for the importer;

(B) the HTS classification of the imported product;

(C) weight of the product for which the exemption is sought;

(D) estimated date of entry;

(E) commercial invoices of other such documentation indicating the origin or production or type of the cotton fiber used to produce the imported product;

(F) manufacture's description of the imported product.

(7) The exemption number ''999999999'' shall be entered on the Customs entry summary document, in the appropriate location as determined by the U.S. Customs Service, by the importer when, based on the importer's own determination, the imported product is identified by a Harmonized Tariff Schedule classification number which is subject to assessment but the particular article contains no cotton.

(8) Articles imported into the United States temporarily and under bond which are classified by the Harmonized Tariff Schedule heading which begins with ''9813'' shall not be subject to assessment.

(9) Articles imported into the U.S. after being exported from the U.S. for alterations and which are classified by the Harmonized Tariff Schedule subheadings 9802.00.40 and 9802.00.50 shall not be subject to assessment.

[57 FR 29432, July 2, 1992, as amended at 58 FR 52216, Oct. 7, 1993; 59 FR 59111, Nov. 16, 1994; 60 FR 36034, July 13, 1995; 61 FR 31819, 31822, June 21, 1996; 62 FR 22878, Apr. 28, 1997; 62 FR 46414, Sept. 2, 1997; 62 FR 50244, Sept. 25, 1997; 63 FR 27819, May 21, 1998; 64 FR 30238, June 7, 1999; 65 FR 25237, May 1, 2000; 65 FR 70644, Nov. 27, 2000]

§ 1205.511 Payment and collection.

(a) The $1 per bale assessment shall be paid by:

(1) The producer of the cotton to the collecting handler designated in § 1205.512, and

(2) The importer of cotton to the Customs Service as provided in § 1205.514.

(b) The supplemental assessment shall be paid by:

(1) The producer of the cotton to the collecting handler designated in § 1205.513, and

(2) The importer of cotton to the Customs Service as described in § 1205.515.

(c) If more than one person subject to assessment shares in the proceeds received from a bale or bale equivalent, each such person is obligated to pay that portion of the assessment that is equivalent to that person's proportionate share of the proceeds.

(d) Failure of the handler to collect the assessments on each bale shall not relieve the handler of the handler's obligation to remit the assessments to the Cotton Board as required in §§ 1205.512, 1205.513 and 1205.516.

[57 FR 29190, July 1, 1992]

§ 1205.512 Collecting handlers and time of collection of $1 per bale assessment.

Collecting handlers and the time of collecting the $1 per bale assessment shall be as follows:

(a) Except as provided in paragraph (b) of this section, any person who purchases a bale of cotton from the producer of the cotton shall be the collecting handler for such cotton. The handler shall collect the assessment at the time the handler first makes any payment or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(b) Any cooperative marketing association or other person that accepts a bale of cotton from the producer of the cotton under an oral or written contract or agreement providing for the marketing of the cotton shall be the collecting handler for such cotton. Such association or person shall collect the assessment regardless of whether the cotton is marketed or tendered to CCC for price support loan. The handler shall collect the assessment at the time the handler first makes any cash advance, any payment, or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(c) For bales of cotton tendered to CCC for Form A loan, except bales tendered pursuant to paragraph (b) of this section:

(1) The ASCS County Office shall be the collecting handler except as provided in paragraph (c)(2) of this section. The ASCS County Office shall collect the assessment when it makes disbursement based on the Form A loan documents. The producer's copy of the Cotton Producer's Note (Form CCC Cotton A) shall show payment of the assessment and shall constitute the producer's receipt for payment of the assessment.

(2) Any person (other than an ASCS County Office) who advances to the producer the loan value of the cotton as shown on a Cotton Producer's Note (Form CCC Cotton A) shall be the collecting handler for such cotton. The handler shall collect the $1 per bale assessment at the time the handler makes any advance to the producer on the loan value of the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(d) Any person who purchases cotton in the cotton field where produced or who purchases seed cotton or unbaled lint cotton from the producer of the cotton shall be the collecting handler. The handler shall collect the assessment at the time such cotton is ginned and shall give the producer a receipt indicating payment of the assessment. When a bale is ginned that contains any such cotton purchased from more than one producer, the handler shall collect each producer's proportionate share of the assessment and shall give each producer a receipt indicating the producer's proportionate share of the assessment payment.

(e) Any person who purchases cotton from a producer whereby the producer agrees to deliver a certain quantity of cotton but retains the right to establish the price at some future date shall be the collecting handler for such cotton. The handler shall collect the $1 per bale assessment at the time final settlement is made on the cotton. The handler shall give the producer a receipt indicating payment of the $1 per bale assessment.

(f) Any person who consumes domestically or exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the assessment to the Cotton Board at the time the cotton is consumed or exported.

(g) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d) or (e) of this section shall be the collecting handler for such cotton. Such handler shall collect the assessment at the time such handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(h) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of such producer, or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer for the purposes of this section.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 57 FR 29190, July 1, 1992]

§ 1205.513 Collecting handlers and time of collection of the supplemental assessment.

Collecting handlers and the time of collecting the supplemental assessment shall be as follows:

(a) Except as provided in paragraph (b) of this section, any person who purchases a bale of cotton from the producer of the cotton shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time the handler first makes any payment or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(b) Any cooperative marketing association or other person that accepts a bale of cotton from the producer of the cotton under an oral or written contract or agreement providing for the marketing of the cotton shall be the collecting handler for such cotton. Such association or person shall collect the supplemental assessment regardless of whether the cotton is marketed or tendered to CCC for price support loan. The handler shall collect the supplemental assessment at the time the handler first makes any cash advance, any payment, or any credit to the producer's account for the cotton. Supplemental assessments due on any subsequent cash advances, payments, or credits to the producer's account shall be collected by the handler at the time final settlement is made on the cotton. The handler shall give the producer a receipt each time a supplemental assessment is collected.

(c) For bales of cotton tendered to CCC for Form A loan, except bales tendered pursuant to paragraph (b) of this section:

(1) The ASCS County Office shall be the collecting handler except as provided in paragraph (c)(2) of this section. The ASCS County Office shall collect the supplemental assessment when it makes disbursement based on the Form A loan value of cotton. The producer's copy of the Cotton Producer's Note (Form CCC Cotton A) shall show payment of the supplemental assessment and shall constitute the producer's receipt for payment of the supplemental assessment.

(2) Any person (other than an ASCS County Office) who advances to the producer the loan value of the cotton as shown on a Cotton Producer's Note (Form CCC Cotton A) shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time the handler makes any advance to the producer on the loan value of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(d) With respect to any Upland cotton on which the producer or a cooperative marketing association acting on behalf of a producer receives a loan deficiency payment, the ASCS County Office or the cooperative marketing association shall be the collecting handler of the supplemental assessment on the value of the cotton represented by the loan deficiency payment at the time such payment is made to the producer or the cooperative marketing association. A copy of a document reflecting this transaction issued by the ASCS County Office or cooperative marketing association shall show the amount collected as the supplemental assessment and shall constitute the producer's receipt for payment of the supplemental assessment.

(e) Any person who (1) purchases a producer's equity in cotton tendered to

CCC for Form A loan or (2) purchases cotton that a producer has redeemed from the Form A loan, shall be the collecting handler for the portion of the total supplemental assessment not collected under paragraph (c) of this section. The handler shall give the producer a receipt indicating payment of that portion of the supplemental assessment.

(f) Any person who purchases cotton in the cotton field where produced or who purchases seed cotton or unbaled lint cotton from the producer of the cotton shall be the collecting handler. The handler shall collect the supplemental assessment at the time such cotton is ginned and shall give the producer a receipt indicating payment of the supplemental assessment. When a bale is ginned and baled that contains any such cotton purchased from more than one producer, the handler shall collect each producer's proportionate share of the supplemental assessment and shall give each producer a receipt indicating the producer's proportionate share of the supplemental assessment payment.

(g) Any person who purchases cotton from a producer whereby the producer agrees to deliver a certain quantity of cotton but retains the right to establish the price at some future date shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time final settlement is made on the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(h) Any person who consumes domestically cotton of that person's own production shall be the collecting handler for such cotton. The handler shall pay the supplemental assessment at the time of consumption on the basis of a market value determined in consultation with the Cotton Board.

(i) Any person who exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the supplemental assessment on the basis of the current value of cotton as reflected on the export settlement document.

(j) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d), (e), or (f) of this section shall be the collecting handler for such cotton. Such handler shall collect the supplemental assessment at the time the handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(k) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of such producer or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer for the purposes of this section.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 51 FR 37705, Oct. 24, 1986; 57 FR 29190, July 1, 1992]

§ 1205.514 Customs Service and the Collection of the $1 per bale assessment.

The Collection of the $1 per bale assessment by the Customs Service shall be as follows:

(a) The Customs Service will collect the assessment from the importer or from any person acting as principal, agent, broker or consignee for cotton or cotton-containing products produced outside the United States and imported into the United States. The Customs Service will collect the assessment on cotton and cotton-containing products identified by Harmonized Tariff Schedule heading numbers in § 1205.510(b)(2) at the time of importation and forward such assessment as per the agreement between the United States Customs Service and the U.S. Department of Agriculture.

(b) In the event of an importer's death, bankruptcy, receivership, or incapacity to act, the representative of such importer, or the importer's estate, or the person acting on behalf of creditors, shall be considered the importer for the purposes of this section.

[57 FR 29191, July 1, 1992]

§ 1205.515 Customs Service and the collection of the supplemental assessment.

The collection of the supplemental assessment by the Customs Service shall be as follows:

(a) The Customs Service will collect the supplemental assessment from any person acting as principal, agent, broker or consignee for cotton or cotton-containing products produced outside the United States and imported into the United States. Customs Service will collect the assessment on all cotton and cotton-containing products identified by Harmonized Tariff Schedule heading numbers in § 1205.510(b)(2) at the time of importation and forward such assessment as per the agreement between the United States Customs Service and the U.S. Department of Agriculture.

(b) In the event of an importer's death, bankruptcy, receivership, or incapacity to act, the representative of such importer, or the importer's estate, or the person acting on behalf of creditors, shall be considered the importer for the purposes of this section.

[57 FR 29191, July 1, 1992]

§ 1205.516 Reports and remittance to the Cotton Board.

(a) *Handler reports and remittances.* Each collecting handler shall transmit assessments to the Cotton Board as follows:

(1) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end on the close of business on the last day of the month.

(2) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton Board. Each report shall be mailed to the Cotton Board and postmarked within ten days after the close of the reporting period.

(i) *Collecting handler report.* Each collecting handler shall prepare a separate report form each reporting period for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board and shall contain the following information:

(A) Date of report;

(B) Reporting period covered by report;

(C) Gin code number;

(D) Name and address of handler;

(E) Listing of all producers from whom the handler was required to collect the assessments, their addresses, total number of bales, and total assessment collected and remitted for each producer;

(F) Date of last report remitting assessments to the Cotton Board.

(ii) *No cotton purchased report.* Each collecting handler shall submit a no cotton purchased report form for each reporting period in which no cotton was handled for which the handler is required to collect assessments during the reporting period. A collecting handler who handles cotton only during certain months shall file a final no cotton purchased report at the conclusion of such handlers marketing season. If a collecting handler handles cotton during any month following submission of the final report for the handlers marketing season, such handler shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The no cotton purchased report shall be signed and dated by the handler of the handler's agent.

(3) *Remittances.* The collecting handler shall remit all assessments to the Cotton Board with the report required in paragraph (a)(2) of this section. All remittances sent to the Cotton Board by collecting handlers shall be made by check, draft, or money order payable to the order of the ''Cotton Board''. All remittances shall be received subject to collection and payment at par.

(4) *Interest and late payment charges.* (i) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler who is sent a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1–July 31).

(ii) In addition to the interest charge specified in paragraph (a)(4)(i) of this section, there shall be a late payment charge on any handler whose remittance is not received by the Cotton Board within 10 days after the close of the reporting period in which interest charges were first accrued. The late payment charge shall be 5 percent of the unpaid balance before interest charges have accrued.

(iii) The interest and late payment charges on the unremitted assessments

for a particular reporting period will be applied from the first working day on or following the 20th day of the month in which the assessments were due.

(b) *Importer reports and remittance.* The United States Customs Service will transmit reports and assessments collected on imported cotton to the Agricultural Marketing Service according to the agreement between the Customs Service and the Agricultural Marketing Service. Upon the request of the Cotton Board, an importer shall file with the Board a report, for a period of time specified in the request, that includes the following information:

(1) The importer's name and address;

(2) The quantity of cotton and cotton products imported;

(3) The amount of the assessment paid on imported cotton and cotton products;

(4) The amount of imported cotton and cotton products on which the assessment was not paid to the Customs Service.

[57 FR 29190, July 1, 1992]

§ 1205.517 Failure to report and remit.

(a) Any collecting handler who fails to submit reports and remittances according to reporting periods and time schedules required in § 1205.516 shall be subject to appropriate action by the Cotton Board which may include one or more of the following actions:

(1) Audits of the collecting handler's books and records to determine the amount owed the Cotton Board;

(2) Requirement that an escrow account for the deposit of assessments collected be established. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Cotton Board with the Approval of the Secretary;

(3) Referral to the Secretary for appropriate enforcement action;

(4) Publication of a collecting handler's name in accordance with the following provisions:

(i) The name of any collecting handler will be subject to publication if the collecting handler:

(A) is sent two certified mail notices of past due assessments and/or collecting handler reports from the Cotton Board in any one marketing year (August 1–July 31), or

(B) is required by the Cotton Board to establish an escrow account for depositing assessments, in accordance with paragraph (a)(2) of this section, and does not comply with the deposit procedures established by the Cotton Board with approval of the Secretary.

(ii) The name of any collecting handler who is subject to publication will be published by the Cotton Board with the approval of the Secretary in a monthly listing during the primary cotton marketing season (September through March) and a bi-monthly listing during the remainder of the year. The published listing will be distributed by the Cotton Board.

(iii) The Cotton Board, with approval of the Secretary, may notify individual producers that the assessments collected by such producer's collecting handler, whose name is subject to publication in accordance with the provisions of paragraph (a)(4)(i) of this section, have not been remitted to the Cotton Board as required.

(b) Any importer who fails to submit reports to the Cotton Board pursuant to request made according to § 1205.516 or assessments to the Customs Service, shall be subject to one or more of the following actions:

(1) Audits of the importer's books and records to determine the amount owed the Cotton Board.

(2) A deduction for the amount of any unpaid assessment by the Customs Service from the importers surety bond.

(3) Referral to the Secretary for appropriate enforcement action.

[57 FR 29191, July 1, 1992]

§ 1205.518 Receipts for payment of assessments.

Each collecting handler who is required by § 1205.512 and § 1205.513 to give the producer a receipt showing payment of cotton research and promotion assessments shall provide the producer with an invoice or settlement sheet for the cotton. Such document shall serve as a receipt shall contain the following information:

(a) Name and address of collecting handler.

(b) Gin code number of gin at which cotton was ginned.

(c) Name and address of producer who paid assessment.

(d) Number of bales on which assessment was paid.

(e) Gross price per pound received by the producer.

(f) Total assessments paid by the producer.

(g) Date on which assessment was paid by producer.

(Approved by the Office of Management and Budget under control number 0581–0115)

[42 FR 35974, July 13, 1977, as amended at 49 FR 8420, Mar. 7, 1984. Redesignated and amended at 51 FR 6099, Feb. 20, 1986. Further redesignated at 57 FR 29190, July 1, 1992]

REIMBURSEMENTS

§ 1205.520 Procedure for obtaining reimbursement.

Each importer against whose imports of cotton or cotton-containing products any assessments are made and collected may obtain a reimbursement on that portion of the assessment that was collected on cotton produced in the United States or cotton other than Upland cotton by following the procedures prescribed in this section.

(a) *Application form.* An importer shall obtain a reimbursement application form from the Cotton Board. Such form may be obtained by written request to the Cotton Board and the request shall bear the importer's signature or the importer's properly-witnessed mark.

(b) *Submission of reimbursement application to Cotton Board.* Any importer requesting a reimbursement shall mail the application on the prescribed form to the Cotton Board. The application shall be postmarked within 180 days from the date the assessments were paid on the cotton by such importer. The reimbursement application shall show:

(1) The importer's name, address, phone number and Customs Service identification number;

(2) Weight of the cotton in each HTS category for which the reimbursement is requested;

(3) Subtotal amounts to be reimbursed for each HTS number and grand total to be reimbursed;

(4) Date or inclusive dates on which the assessments were paid;

(5) The name of the port of entry; and

(6) Certification by the importer that the cotton was grown in the U.S. or is other than Upland cotton.

(c) Where more than one importer shared in the assessment payment on cotton, joint or separate reimbursement application forms may be filed. In any such case, the reimbursement application shall show the names, addresses and proportionate shares of assessments paid by all importers. The reimbursement application shall bear the signature of each importer seeking reimbursement.

(d) *Proof of payment of the assessment on U.S. produced or other than Upland cotton.* A copy of the Customs entry form and the commercial invoice filed with the Customs Service shall accompany the importer's reimbursement application. Within 60 days from the date the properly executed application for reimbursement is received by the Cotton Board, the Cotton Board shall make reimbursement to the importer. For joint applications, the reimbursement shall be made payable to all eligible importers signing the reimbursement application. Documentation submitted with reimbursement applications shall not be returned to the importer.

[57 FR 29192, July 1, 1992, as amended at 62 FR 22879, Apr. 28, 1997]

WAREHOUSE RECEIPTS

§ 1205.525 Entry of gin code number.

The warehouse that first receives a bale for storage after ginning shall enter the gin code number of the gin at which the bale was ginned on the warehouse receipt issued for the bale.

[57 FR 29192, July 1, 1992]

REPORTS AND RECORDS

§ 1205.530 Gin reports and reporting schedule.

(a) *Gin reports.* Each year each cotton gin in the United States shall submit reports to the Cotton Board on forms or certificates made available or approved by the Cotton Board as follows:

(1) *End-of-season report.* Except as provided in paragraph (a)(2) of this section, each gin shall report to the Cotton Board an alphabetical listing of

producer names, their addresses, and the number of bales ginned for each such producer during its ginning season.

(2) *Certificate in Lieu of End-of-Season Report*. If a gin is the collecting handler on every bale ginned at such gin and collecting handler reports and remittances of assessments have been made in accordance with §1205.516, a certification to that effect may be made to the Cotton Board in lieu of an end-of-season report.

(b) *Reporting schedule*. The schedule for submitting gin reports is as follows:

(1) Each gin that completes ginning operations prior to January 16 shall make a report to the Cotton Board within 10 days after completion of ginning.

(2) Each gin that operates on or after January 16 will make a report to the Cotton Board not later than January 25 covering bales ginned through January 15.

(3) Each gin that operates after January 15 shall make a supplemental report to the Cotton Board within 10 days after the close of ginning operations covering bales ginned after January 15.

[42 FR 35974, July 13, 1977, as amended at 57 FR 29192, July 1, 1992]

§1205.531 Records.

Each handler or importer required to make reports pursuant to this subpart shall maintain such books and records as are necessary to verify the reports.

[57 FR 29192, July 1, 1992]

§1205.532 Retention period for reports and records.

Each handler and importer required to make reports pursuant to this subpart shall retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of the report made to the Cotton Board; and

(b) Such books and records as are necessary to verify such reports.

[57 FR 29192, July 1, 1992]

§1205.533 Availability of reports and records.

Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by the Cotton Board, including its designated employees, and the Secretary any reports, books, or records required under this subpart.

[57 FR 29192, July 1, 1992]

CONFIDENTIAL INFORMATION

§1205.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and importers shall be kept confidential in the manner and to the extent provided for in §1205.340.

[57 FR 29192, July 1, 1992]

§1205.541 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511, is OMB number 0581–0093, except Board member nominee information sheets are assigned OMB number 0505–0001.

[57 FR 29192, July 1, 1992]

Subpart—Fiscal Period [Reserved]

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Subpart—Potato Research and Promotion Plan

DEFINITIONS

Sec.
1207.301 Secretary.
1207.302 Act.
1207.303 Plan.
1207.304 Person.
1207.305 Producer.
1207.306 Potatoes.
1207.307 Handle.
1207.308 Handler.
1207.309 Board.
1207.310 Fiscal period and marketing year.
1207.311 Programs and projects.
1207.312 Importer.
1207.313 Customs Service.

NATIONAL POTATO PROMOTION BOARD

1207.320 Establishment and membership.
1207.321 Term of office.
1207.322 Nominations and appointment.
1207.323 Acceptance.
1207.324 Vacancies.
1207.325 Procedure.
1207.326 Compensation and reimbursement.

1207.327 Powers.
1207.328 Duties.

RESEARCH AND PROMOTION

1207.335 Research and promotion.

EXPENSES AND ASSESSMENTS

1207.341 Budget and expenses.
1207.342 Assessments.
1207.343 [Reserved]
1207.344 Operating reserve.

REPORTS, BOOKS, AND RECORDS

1207.350 Reports.
1207.351 Books and records.
1207.352 Confidential treatment.

MISCELLANEOUS

1207.360 Influencing governmental action.
1207.361 Right of the Secretary.
1207.362 Suspension or termination.
1207.363 Proceedings after termination.
1207.364 Effect of termination or amendment.
1207.365 Personal liability.
1207.366 Separability.

Subpart—Rules and Regulations

DEFINITIONS

1207.500 Definitions.

GENERAL

1207.501 Communications.
1207.502 Determination of membership.
1207.503 Nominations.
1207.504 Term of office.
1207.505 Procedure.
1207.506 Policy.
1207.507 Administrative Committee.
1207.508 USDA costs.

ASSESSMENTS

1207.510 Levy of assessments.
1207.511 Determination of assessable quantity.
1207.512 Designated handler.
1207.513 Payment of assessments.
1207.514 [Reserved]
1207.515 Safeguards.

RECORDS

1207.532 Retention period for records.
1207.533 Availability of records.
1207.534 OMB control number assigned pursuant to the Paperwork Reduction Act.

CONFIDENTIAL INFORMATION

1207.540 Confidential books, records, and reports.
1207.545 Right of the Secretary.
1207.546 Personal liability.

AUTHORITY: 7 U.S.C. 2611–2627.

Subpart—Potato Research and Promotion Plan

SOURCE: 37 FR 5008, Mar. 9, 1972, unless otherwise noted.

DEFINITIONS

§ 1207.301 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1207.302 Act.

Act means the Potato Research and Promotion Act, *Title III of Public Law 91–670, 91st Congress, approved January 11, 1971, 84 Stat. 2041*, as amended.

[56 FR 40229, Aug. 14, 1991]

§ 1207.303 Plan.

Plan means this potato research and promotion plan issued by the Secretary pursuant to the act.

§ 1207.304 Person.

Person means any individual, partnership, corporation, association, or other entity.

§ 1207.305 Producer.

Producer means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

§ 1207.306 Potatoes.

Potatoes means any or all varieties of Irish potatoes grown by producers in the 50 states of the United States and grown in foreign countries and imported into the United States.

[56 FR 40229, Aug. 14, 1991]

§ 1207.307 Handle.

Handle means to grade, pack, process, sell, transport, purchase, or in any other way to place potatoes or cause potatoes to be placed in the current of commerce. Such term shall not include the transportation or delivery of field-run potatoes by the producer thereof to

a handler for grading, storage, or processing.

§ 1207.308 Handler.

Handler means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes, including a producer who handles potatoes of his own production.

§ 1207.309 Board.

Board means the National Potato Promotion Board, hereinafter established pursuant to § 1207.320.

§ 1207.310 Fiscal period and marketing year.

Fiscal period and *marketing year* mean the 12-month period from July 1 through June 30 of the following year or such other period which may be approved by the Secretary.

§ 1207.311 Programs and projects.

Programs and *projects* mean those research, development, advertising or promotion programs or projects developed by the Board pursuant to § 1207.335.

§ 1207.312 Importer.

Importer means any person who imports tablestock, frozen or processed potatoes for ultimate consumption by humans, or seed potatoes into the United States.

[56 FR 40229, Aug. 14, 1991]

§ 1207.313 Customs Service.

Customs Service means the United States Customs Service of the United States Department of the Treasury.

[56 FR 40229, Aug. 14, 1991]

NATIONAL POTATO PROMOTION BOARD

§ 1207.320 Establishment and membership.

(a) There is hereby established a National Potato Promotion Board, hereinafter called the ''Board'', composed of producers, importers, and a public member appointed by the Secretary. Producer members shall be appointed from nominations submitted by producers in the various States or groups of States pursuant to § 1207.322. Importer members shall be appointed from nominations submitted by importers pursuant to § 1207.322. The public member shall be nominated by Board members in such manner as recommended by the Board and approved by the Secretary, and shall be appointed by the Secretary.

(b) Producer membership upon the Board shall be determined on the basis of the potato production reported in the latest Crop Production Annual Summary Report issued by the Crop Reporting Board, U.S. Department of Agriculture. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, for each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member. However, each State shall initially be entitled to at least one member.

(c) The number of importer member positions on the Board shall be based on the hundredweights of potatoes, potato products equivalent to fresh potatoes, and seed potatoes imported into the United States but shall not exceed five importer members. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, there shall be one importer member position for each 5 million hundredweight, or major fraction thereof, of potatoes, potato product equivalents, and seed potatoes imported into the United States.

(d) Any State in which the potato producers fail to respond to an officially called nomination meeting may be combined with an adjacent State for the purpose of representation on the Board, in which case the Board's producer member selected by the Secretary will represent both States, but such member's voting power under § 1207.325 shall not be increased.

(e) The Secretary, upon recommendation of the Board, may establish, through rule making procedure, districts or groups of States in order to change the representation requirements for membership on the Board. In such event the voting power of members under § 1207.325 would be based upon the total production within the new district or group of States.

(f) Should the Board fail to nominate a public member, the Secretary may appoint such member.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 49 FR 31390, Aug. 7, 1984; 56 FR 40229, Aug. 14, 1991]

§ 1207.321 Term of office.

(a) The term of office of Board members shall be 3 years, beginning July 1, or such other beginning date as may be approved pursuant to regulations.

(b) The terms of office of the Board's producer members shall be so determined that approximately one-third of the terms will expire each year. Importer and public member terms shall run concurrently. All members serving on the Board on the effective date of this amendment to the Plan shall continue serving the term to which they were appointed.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve for more than two full successive terms of office.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40229, Aug. 14, 1991]

§ 1207.322 Nominations and appointment.

The Secretary shall select the producer, importer, and public members of the Board from nominations which may be made in the following manner.

(a) A meeting or meetings of producers shall be held in each State to nominate producer members for the Board. For nominations to the initial Board the meetings shall be announced by the U.S. Department of Agriculture. The Department may call upon other organizations to assist in conducting the meetings such as State and national organizations of potato producers. Such nomination meetings shall be held not later than 60 days after the issuance of this subpart. Any organization designated to hold such nomination meetings shall give adequate notice of such meetings to the potato producers affected; also to the Secretary so that a representative of the Secretary, if available, may conduct such meetings or act as secretary of such nomination meetings.

(b) After the establishment of the initial Board, the nominations for subsequent Board producer members shall be made by producers at meetings in the producing sections or States. The Board shall hold such meetings, or cause them to be held, in accordance with rules established pursuant to recommendation of the Board.

(c) Only producers may participate in designating producer nominees. Each producer is entitled to one vote only on behalf of himself, his partners, agents, subsidiaries, affiliates, and representatives for each position for which nominations are being held. If a producer is engaged in producing potatoes in more than one State, he shall elect the State in which he shall vote. In no event shall he vote in nominations in more than one meeting.

(d) The importer members shall be nominated by importers of potatoes, potato products and/or seed potatoes. The number of importer members on the Board shall be announced by the Secretary and shall not exceed five members. The Board may call upon organizations of potato, potato products and/or seed potato importers to assist in nominating importers for membership on the Board. If such organizations fail to submit nominees or are determined by the Board to not adequately represent importers, then the Board may conduct meetings of importers to nominate eligible importers for Board member positions. In determining if importer organizations adequately represent importers, the Board shall consider:

(1) How many importers belong to the association;

(2) What percentage of the total number of importers is represented by the association;

(3) Is the association representative of the potato, potato product, and seed potato import industry;

(4) Does the association speak for potato, potato product, and seed potato importers; and

(5) Other relevant information as may be warranted.

(e) The public member shall be nominated by the producer and importer members of the Board. The public

member shall have no direct financial interest in the commercial production or marketing of potatoes except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and the Secretary approves.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 56 FR 40229, Aug. 14, 1991]

EFFECTIVE DATE NOTE: At 62 FR 46179, Sept. 2, 1997, in § 1207.322, paragraphs (a) and (d)(1) through (d)(5); in paragraph (b), the words ''at meetings'' in the first sentence and the entire last sentence; in paragraph (c), the last sentence; and in paragraph (d), the last two sentences of the introductory text are suspended, effective Sept. 3, 1997.

§ 1207.323 Acceptance.

Each person selected by the Secretary as a member of the Board shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 1207.324 Vacancies.

To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1207.322. In the event of failure to provide nominees for such vacancies, the Secretary may select other eligible persons.

§ 1207.325 Procedure.

(a) Each State (or district or group of States established pursuant to § 1207.320) which has a member on the Board shall be entitled to not less than one vote for any production up to 1 million hundredweight, plus one additional vote for each additional 1 million hundredweight of production, or major fraction thereof, as determined by the latest crop production annual summary report issued by the Crop Reporting Board, U.S. Department of Agriculture. The casting of the votes for each State shall be determined by the members of the Board from that State.

(b) A majority of the Board members shall constitute a quorum and any action of the Board shall require a majority of concurring votes of those present and voting. At assembled meetings all votes shall be cast in person or by duly authorized proxy.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, or telephone. Any vote cast by telephone shall be confirmed promptly in writing.

[37 FR 5008, Mar. 9, 1972, as amended at 57 FR 40083, Sept. 2, 1992]

§ 1207.326 Compensation and reimbursement.

Members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as members of the Board.

§ 1207.327 Powers.

The Board shall have the following powers subject to § 1207.361:

(a) To administer the provisions of this plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this plan;

(c) To receive, investigate, and report to the Secretary complaints of violations of this plan; and

(d) To recommend to the Secretary amendments to this plan.

§ 1207.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet and organize and to select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of Board members to nominate the public member; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish advisory committees of persons other than Board members;

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of

each; and to protect the handling of Board funds through fidelity bonds;

(c) At the beginning of each fiscal period, to prepare and submit to the Secretary for his approval a budget on a fiscal period basis of the anticipated expenses in the administration of this plan including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To develop programs and projects and to enter into contracts or agreements for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers, handlers, and importers;

(g) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(h) To act as intermediary between the Secretary and any producer, handler, or importer;

(i) To furnish the Secretary such information as he may request.

(j) To prepare and submit to the Secretary such reports from time to time as may be prescribed by the Secretary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board; and

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 56 FR 40230, Aug. 14, 1991; 57 FR 40083, Sept. 2, 1992]

RESEARCH AND PROMOTION

§ 1207.335 Research and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for the advertising and promotion of potatoes and potato products: *Provided, however,* That any such program or project shall be directed toward increasing the general demand for potatoes and potato products;

(b) Establishing and carrying on research and development projects and studies to the end that the marketing and utilization of potatoes may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards and supply management programs shall not be conducted under, or as a part of, this plan; and

(c) The development and expansion of potato and potato product sales in foreign markets.

(d) No advertising or promotion program shall make any reference to private brand names or use false or unwarranted claims in behalf of potatoes or their products or false or unwarranted statements with respect to the attributes or use of any competing products.

EXPENSES AND ASSESSMENTS

§ 1207.341 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1207.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of potatoes and potato products, such other expenses for the administration, maintenance, and functioning of the Board, and any referendum and administrative costs incurred by the Department of Agriculture as are approved pursuant to § 1207.361.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

§ 1207.342 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers and importers as designated in regulations recommended by the Board and issued by the Secretary. Such assessments shall be levied at a rate fixed by the Secretary which shall not exceed one-half of one per centum of the immediate past ten calendar years United States average price received for potatoes by growers as reported by the Department of Agriculture and not more than one such assessment may be collected on any potatoes.

(b) Each designated handler, as specified in regulations, shall pay assessments to the Board on all potatoes handled by him, including potatoes he produced. Assessments shall be paid to the Board at such time and in such manner as the Board shall direct pursuant to regulations issued hereunder. The designated handler may collect the assessments from the producer, or deduct such assessments from the proceeds paid to the producer on whose potatoes the assessments are made, provided he furnishes the producer with evidence of such payment.

(c) The importer of imported potatoes, potato products, or seed potatoes shall pay the assessment to the Board at the time of entry, or withdrawal, for consumption of such potatoes and potato products into the United States.

(d) The assessment on imported tablestock potatoes and frozen or processed potato products for ultimate consumption by humans and on seed potatoes shall be established by the Board so that the effective assessment shall be equal to that on domestic production.

(e) The Board may authorize other organizations to collect assessments in its behalf.

(f) The Board may exempt potatoes used for nonfood purposes, other than seed, from the provisions of this plan and shall establish adequate safeguards against improper use of such exemptions.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 56 FR 40230, Aug. 14, 1991]

§ 1207.343 [Reserved]

§ 1207.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this part.

REPORTS, BOOKS, AND RECORDS

§ 1207.350 Reports.

(a) Each designated handler shall maintain a record with respect to each producer for whom he handled potatoes and for potatoes handled which he himself produced. He shall report to the Board at such times and in such manner as it may prescribe by regulations such information as may be necessary for the Board to perform its duties under this part. Such reports may include, but shall not be limited to, the following:

(1) Total quantity of potatoes handled for each producer and for himself, including those which are exempt under the plan;

(2) Total quantity of potatoes handled for each producer and for himself subject to the plan and assessments, and

(3) Name and address of each person from whom he collected an assessment, the amount collected from each person, and the date such collection was made.

(b) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40230, Aug. 14, 1991]

§ 1207.351 Books and records.

Each handler or importer subject to this part shall maintain and make available for inspection by authorized employees of the Board and the Secretary such books and records as are appropriate and necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be maintained for at least 2 years beyond the marketing year of their applicability.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40230, Aug. 14, 1991]

§ 1207.352 Confidential treatment.

All information obtained from books, records, or reports required pursuant to this part shall be kept confidential by all employees of the Department of Agriculture and of the Board, and by all contractors and agents retained by the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this Plan, which statements do not identify the information furnished by any person; or

(b) The publication by direction of the Secretary of the name of any person violating this Plan, together with a statement of the particular provisions of this Plan violated by such person.

[56 FR 40230, Aug. 14, 1991]

MISCELLANEOUS

§ 1207.360 Influencing governmental action.

No funds collected by the Board under this plan shall in any matter be used for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this subpart.

§ 1207.361 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.362 Suspension or termination.

(a) The Secretary shall, whenever he finds that this plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the potato producers and importers to determine whether potato producers and importers favor termination or suspension of this plan. The Secretary shall suspend or terminate such plan at the end of the marketing year whenever the Secretary determines that its suspension or termination is favored by a majority of the potato producers and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of potatoes or potato products, and who produced or imported more than 50 percent of the volume of the potatoes or potato products produced or imported by the producers and importers voting in the referendum.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40230, Aug. 14, 1991]

§ 1207.363 Proceedings after termination.

(a) Upon the termination of this plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in the possession or under control of the Board including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to this plan; (3) account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and (4) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all of the funds, property, and claims vested in the Board of the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustee.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and importers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and importers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40231, Aug. 14, 1991]

§ 1207.364 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this plan or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this plan or any regulation issued thereunder, or (b) release or extinguish any violation of this plan or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

§ 1207.365 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgments, mistakes, or other acts, either of commission or omission, as such member except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1207.366 Separability.

If any provision of this plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this plan or applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Rules and Regulations

SOURCE: 37 FR 17379, Aug. 26, 1972, unless otherwise noted.

DEFINITIONS

§ 1207.500 Definitions.

(a) Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Potato Research and Promotion Plan.

(b) *Processor*. *Processor* means any person who commercially processes potatoes into potato products, including, but not restricted to, frozen, dehydrated, or canned potato products, potato chips and shoestrings, and flour.

(c) *Imported frozen or processed potatoes for ultimate consumption by humans*. *Imported frozen or processed potatoes for ultimate consumption by humans* means products which are imported into the United States which the Secretary determines contain a substantial amount of potato.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40231, Aug. 14, 1991; 57 FR 40083, Sept. 2, 1992]

GENERAL

§ 1207.501 Communications.

All communications in connection with the Potato Research and Promotion Plan shall be addressed to: National Potato Promotion Board, 7555 East Hampden Avenue, Suite 412, Denver, Colorado 80231.

[59 FR 44036, Aug. 26, 1994]

§ 1207.502 Determination of membership.

(a) Pursuant to § 1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production of the 3 preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the Crop Reporting Board of the U.S. Department of Agriculture.

(b) Pursuant to § 1207.320 and the recommendation of the Board, annual importer memberships on the Board shall be determined on the basis of the average potato, potato product, and seed potato importation of the 3 preceding years as determined by the Board's records.

[56 FR 40231, Aug. 14, 1991]

§ 1207.503 Nominations.

(a) Pursuant to § 1207.322 of the plan, the Board shall assist producers in producing sections or States each year to nominate producer members for the Board. Such nominations may be conducted at meetings or by mail ballots. One individual shall be nominated for each position to become vacant. A list of nominees shall be submitted to the Secretary for consideration by November 1 of each year.

(b) Pursuant to § 1207.322 of the plan, the Board shall assist importers each year to nominate importer members for the Board. Such nominations may be conducted at meetings or by mail ballots.

(c) Nomination meetings or mail balloting shall be well publicized with notice given to producers, importers, and the Secretary at least 10 days prior to each meeting or mailing of ballots.

(d) The public member shall be nominated by the producer and importer members of the Board.

[37 FR 17379, Aug. 26, 1972, as amended at 49 FR 2093, Jan. 18, 1984; 56 FR 40231, Aug. 14, 1991; 62 FR 46179, Sept. 2, 1997]

§ 1207.504 Term of office.

(a) The term of office of Board members shall be for three years and shall begin March 1 and end on the last day of February.

(b) Board members shall serve during the term of office for which they are selected and have qualified and until their successors are selected and have qualified.

[38 FR 7123, Mar. 16, 1973, as amended at 49 FR 2093, Jan. 18, 1984]

§ 1207.505 Procedure.

(a) The procedure for conducting the Board's meetings shall be in accordance with the bylaws adopted by the Board on June 7, 1972, and approved by the Secretary and any subsequent amendments adopted by the Board and approved by the Secretary.

(b) Each importer member shall be entitled to not less than one vote. Importer members shall also be entitled to one additional vote for each 1 million hundredweight, or major fraction thereof, on a fresh-weight basis, of imported tablestock potatoes, potato products, or seed potatoes, as determined by data on imports provided by the U.S. Department of Agriculture. The casting of such votes shall be determined by the importer members.

[62 FR 46179, Sept. 2, 1997]

§ 1207.506 Policy.

(a) It shall be the policy of the Board to carry out an effective and continuous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for potatoes and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the potato industry and no undue preference shall be given to any of the various industry segments.

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee composed of producer members as provided for in the Board's bylaws, one or more importer members, and the public member. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the Chairperson and six Vice-Chairpersons, one of whom shall also serve as the Secretary and Treasurer of the Board.

(b) The Administrative Committee shall act for the Board in implementing such marketing research, development, advertising, and/or promotion activities as directed by the Board, and shall, subject to such direction, be charged with developing and submitting to the Secretary for his approval specific programs or projects in the name of the Board. The Administrative Committee shall further act for the Board in authorizing contracts or agreements for the development and carrying out of such programs or projects and the payment of the costs thereof with funds collected pursuant to § 1207.342 of the plan.

(1) The Administrative Committee also shall act for the Board in contracting with cooperating agencies for the collection of assessments pursuant to § 1207.513(d).

(2) [Reserved]

(c) The Board may assign such other administrative powers and duties to the Administrative Committee as it shall determine, and the Administrative Committee shall act on behalf of and in the name of the Board in all administrative matters.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 44 FR 25621, May 2, 1979; 50 FR 25199, June 18, 1985; 56 FR 40231, Aug. 14, 1991; 59 FR 44036, Aug. 26, 1994]

§ 1207.508 USDA costs.

Pursuant to § 1207.341 of the Plan the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Plan as are determined periodically by the Secretary. Payment shall be due promptly after billing for such costs.

[49 FR 26202, June 27, 1984]

ASSESSMENTS

§ 1207.510 Levy of assessments.

(a) *Domestic assessments*. (1) An assessment rate of 2 cents per hundredweight shall be levied on all potatoes produced within the 50 States of the United States.

(2) No assessment shall be levied on potatoes grown in the 50 States of the United States by producers of less than 5 acres of potatoes.

(b) *Assessments on imports*. (1) An assessment rate of 2 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate consumption by humans and all seed potatoes imported into the United States. An assessment rate of 2 cents per hundredweight shall be levied on the fresh weight equivalents of imported frozen or processed potatoes for ultimate consumption by humans. The importer of imported tablestock potatoes, potato products, or seed potatoes shall pay the assessment to the Board through the U.S. Customs Service at the time of entry or withdrawal for consumption of such potatoes and potato products into the United States.

(2) The following conversion factors shall be used to determine the fresh weight equivalents of frozen and processed potato products:

Frozen potato products	.50
Canned potatoes	.636
Potato chips and shoestring potatoes	.245
Dehydrated potato products	.14
Potato starch	.1111

(3) The Harmonized Tariff Schedule (HTS) categories and assessment rates on imported tablestock potatoes and frozen or processed potatoes for ultimate consumption by humans and on imported seed potatoes are as follows:

Tablestock potatoes, processed potato products, and seed potatoes	Assessment	
	Cents/cwt	Cents/kg
0701.10.0020	2.00	0.0441
0701.10.0040	2.00	0.0441
0701.90.1000	2.00	0.0441
0701.90.5010	2.00	0.0441
0701.90.5020	2.00	0.0441
0701.90.5030	2.00	0.0441
0701.90.5040	2.00	0.0441

Tablestock potatoes, processed potato products, and seed potatoes	Assessment	
	Cents/cwt	Cents/kg
0710.10.0000	4.00	0.0882
2004.10.4000	4.00	0.0882
2004.10.8020	4.00	0.0882
2004.10.8040	4.00	0.0882
2005.20.6060	3.1446	0.0693
0712.10.0000	14.2857	0.3149
1105.10.0000	14.2857	0.3149
1105.20.0000	14.2857	0.3149
2005.20.6040	14.2857	0.3149
2005.20.2000	8.1633	0.1800
1108.13.0010	18.0018	0.3969

(4) No assessments shall be levied on otherwise assessable potatoes which are contained in imported products wherein potatoes are not a principal ingredient.

(c) Potatoes and potato products used for nonhuman food purposes, other than seed, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of § 1207.515 of this subpart.

(d) No more than one such assessment shall be made on any potatoes or potato products.

[57 FR 40083, Sept. 2, 1992, as amended at 58 FR 3359, Jan. 8, 1993; 59 FR 44036, Aug. 26, 1994]

§ 1207.511 Determination of assessable quantity.

The assessable quantity of potatoes in any lot shall be determined on the basis of utilization. Assessments shall be due on the entire lot handled for human consumption, seed, or unspecified purposes if there is no accounting made on the basis of the utilization of such lot. However, if the accounting identifies all or portions of such lot on the basis of utilization, assessments shall be due only on that portion utilized for human consumption and seed.

§ 1207.512 Designated handler.

The assessment on each lot of potatoes produced in the 50 States of the United States and handled shall be paid by the designated handler as hereafter set forth.

(a) Unless otherwise provided in paragraphs (a)(8), (b), and (c) of this section, the designated handler shall be the first handler of such potatoes. The first handler is the person who initially performs a handler function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the potatoes in the channels of commerce. A producer who grades, packs, or otherwise performs handler functions thereby becomes a handler and as such assumes first handler responsibilities under this part. The following examples are provided to aid in identification of first handlers who are designated handlers:

(1) Producer delivers field-run potatoes of his own production to a handler for preparation for market. The handler in this instance is the designated handler, regardless of whether he subsequently handles such potatoes for his own account or for the account of the producer.

(2) Producer delivers field-run potatoes of his own production to a handler who takes title to such potatoes and places them in storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(3) Producer delivers field-run potatoes to a commercial storage facility for the purpose of holding such potatoes under his own account for later sale. There is no designated handler in this instance since such potatoes have not been handled as heretofore defined and no assessment is due. The designated handler of such potatoes would be identified on the basis of subsequent handling of such potatoes.

(4) Fresh shipper purchases a lot of potatoes from a producer, packs a portion of such potatoes for fresh market, and delivers the balance to a processor. The fresh shipper is the designated handler for all potatoes in the lot.

(5) Handler purchases potatoes from a producer's field or storage for the purpose of preparing such potatoes for market or for transporting such potatoes to storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(6) Producer packs and sells potatoes of his own production from the field, roadside stand, or storage to a consumer, itinerant trucker, or other buyer. In performing such handler functions the producer assumes the responsibility of designated handler.

(7) Processor utilizes potatoes of his own production in the manufacture of

potato chips, frozen, dehydrated, or canned products for human consumption. In so handling potatoes, the processor assumes the responsibility of designated handler.

(8) Producer utilizes potatoes of his own production for seed in planting his subsequent crop. Such seed potatoes do not enter the current of commerce; there is no designated handler in this instance since the potatoes have not been handled as heretofore defined and no assessment is due. However, seed potatoes sold or shipped to other producers for planting or to other persons for subsequent disposition enter the current of commerce and are subject to assessment. The producer of seed potatoes shall be the designated handler of such potatoes shipped to other producers for planting and the assessment is due when he first sells or otherwise handles such potatoes. The first person who acquires seed potatoes from the producer thereof for subsequent disposition other than planting by said person shall be the designated handler of such potatoes. However, the seed producer will be the designated handler responsible for filing reports and making payments, unless he can show that the first person who obtained the potatoes from him disposed of them other than by planting. To show this the seed producer must submit to the Potato Board the name and address of the first person who obtained the potatoes from him and an invoice of sale or settlement sheet on which it is indicated that such person will be the designated handler and therefore will be responsible for the payment of the assessments. Only by showing this is the seed producer no longer considered the designated handler and therefore not liable for the assessments.

(b) Any person who handles potatoes for a producer thereof under oral or written contract or agreement providing for the sale thereof shall be the designated handler for such potatoes, notwithstanding the fact that the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes.

Examples. A cooperative marketing association, or other person, who makes an accounting to the producer, or pay the proceeds of the sale to the producer would be the designated handler responsible for the assessment.

(c) Any processor who purchases potatoes from the producer thereof shall be the designated handler even though the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 4, 40 FR 7893, Feb. 24, 1975; Amdt. 7, 43 FR 9133, Mar. 6, 1978; Amdt. 8, 43 FR 51001, Nov. 2, 1978; 56 FR 40231, Aug. 14, 1991]

§ 1207.513 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced potatoes shall become due at the time a determination of assessable potatoes is made in the normal handling process, pursuant to § 1207.511. If no determination is made of the utilization of a lot, assessments shall be due on the entire lot when it enters the current of commerce. The assessment on imported potatoes, potato products, and seed potatoes shall become due at the time of entry, or withdrawal, for consumption into the United States.

(b) *Responsibility for payment.* (1) The designated handler is responsible for payment of the assessment on domestically produced potatoes. He may pay with no reimbursement from the producer. In the alternative, he may collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose potatoes the assessment is made, provided he furnishes the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable by the handler to the Board. Failure of the handler to collect or deduct such assessment does not relieve the handler of his obligation to remit the assessment to the Board.

(2) The Customs Service shall collect payment of assessment on imported potatoes, potato products, and seed potatoes from importers and forward such assessment per agreement between the Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessment

directly to the Board of any assessment due but not collected by the Customs Service at the time of entry, or withdrawal, for consumption into the United States. An importer may apply to the Board for reimbursement of assessments paid on exempted products.

(c) *Payment directly to the Board.* (1) Except as provided in paragraphs (b) and (d) of this section, each designated handler or importer shall remit assessments directly to the Board by check, draft, or money order payable to the National Potato Promotion Board, or NPPB, not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

(2) All designated handlers, including a designated handler whose own production is handled and assessments to the Board paid by another designated handler, shall report to the Board:

(i) Date of report (which is also date of payment to the Board).

(ii) The name and address of the designated handler;

(iii) The period potatoes were handled;

(iv) The total quantity of potatoes determined to be assessable during the period potatoes were handled, pursuant to § 1207.511.

(3) Designated handlers who collect assessments from producers or withhold assessments from their accounts or pay the assessment themselves shall also include a list of all such producers whose potatoes were handled during the period, their addresses and the total assessable quantities handled for each such producer.

(i) In lieu of such a list, the designated handler may substitute authentic copies of settlement sheets given to each producer provided such settlement sheets contain all the information listed above.

(ii) The words ''final report'' shall be shown on the last report at the close of his marketing season or at the end of each fiscal period if such handler markets potatoes on a year-round basis.

(4) Prepayment of assessment: (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit designated handlers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable potatoes. Such procedure may be permitted when it is considered by the designated handler to be the more practical method of payment.

(ii) Persons using such procedure shall provide a final annual accounting of actual handling and assessments.

(iii) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency.* The Board may authorize other organizations to collect assessments in its behalf. In any State or area in which the Board has negotiated an agreement to collect assessments with an agency such as a State Potato Commission or a Potato Association approved by the Secretary, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers; to qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided, it may acquire such evidence from individual designated handlers.

(1) All such agreements are subject to the requirement of § 1207.352 *Confidential treatment,* of the plan, the provisions of section 310(c) of the Act, and all applicable rules and regulations and financial safeguards in effect under the Act and the plan; and all affected persons shall agree to, and conduct their operations and activities in accordance with, such requirements.

(2) [Reserved]

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 56 FR 40231, Aug. 14, 1991; 62 FR 46179, Sept. 2, 1997]

§ 1207.514 [Reserved]

§ 1207.515 Safeguards.

The Board may require reports by designated handlers and importers on

the handling, importation, and disposition of exempted potatoes. Also, authorized employees of the Board or the Secretary, may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40232, Aug. 14, 1991]

RECORDS

§ 1207.532 Retention period for records.

Each handler and importer required to make reports pursuant to this subpart shall maintain and retain such records for at least 2 years beyond the end of the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify such reports.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40232, Aug. 14, 1991]

§ 1207.533 Availability of records.

(a) Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

(b) Importers shall also maintain for 2 years records on the total quantities of potatoes imported and on the total quantities of potato products imported, and a record of each importation of potatoes, potato products, and seed potatoes including quantity, date, and port of entry, and shall make such records available for inspection by authorized employees of the Board or the Secretary during regular business hours.

[56 FR 40232, Aug. 14, 1991]

§ 1207.534 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control number 0581–0093.

[49 FR 23826, June 8, 1984]

CONFIDENTIAL INFORMATION

§ 1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handler and importers and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1207.352 of the Plan.

[56 FR 40232, Aug. 14, 1991]

§ 1207.545 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.546 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

PART 1208—FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION

Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order

DEFINITIONS

Sec.
1208.1 Act.
1208.2 Consumer information.
1208.3 Council.
1208.4 Cut flowers.
1208.5 Cut greens.
1208.6 Cut flowers and greens.
1208.7 Department.
1208.8 Exempt handler.
1208.9 Fiscal year.
1208.10 Gross sales price.
1208.11 Order.
1208.12 Part and subpart.
1208.13 Person.

1208.14 Promotion.
1208.15 Producer that is a qualified handler.
1208.16 Qualified handler.
1208.17 Research.
1208.18 Retailer.
1208.19 Secretary.
1208.20 Substantial portion.
1208.21 State.
1208.22 Traditional retailer.
1208.23 Traditional retail florist organization.
1208.24 United States.

ESTABLISHMENT OF THE COUNCIL

1208.30 Establishment and membership of the Council.
1208.31 Election and appointment of members and alternates other than retailers.
1208.32 Designation and appointment of retailer members and alternates.
1208.33 Failure to nominate.
1208.34 Terms of office and compensation.
1208.35 Vacancies.
1208.36 Procedure.
1208.37 Executive committee.

ACTIVITIES OF THE COUNCIL

1208.40 Duties of the Council.
1208.41 Budgets and expenses.
1208.42 Plans, projects, budgets, and contracts.
1208.43 Other contracts and agreements.

ASSESSMENTS

1208.50 Assessments.
1208.51 Influencing governmental action.
1208.52 Charges for late payments.
1208.53 Adjustment of accounts.
1208.54 Refunds of assessments and escrow account.
1208.55 Postponement of collections.
1208.56 Determinations.

SUSPENSION OR TERMINATION

1208.60 Suspension and termination.
1208.61 Proceedings after termination.
1208.62 Effect of termination or amendment.

REPORTS, BOOKS, AND RECORDS

1208.70 Books, records, reports, cost control, and audits of the Council.
1208.71 Reports, books, and records of persons subject to this subpart.
1208.72 Confidential treatment.

MISCELLANEOUS

1208.80 Right of the Secretary.
1208.81 Personal liability.
1208.82 Patents, copyrights, inventions, publications, and product formulations.
1208.83 Amendments.
1208.84 Separability.
1208.85 OMB control numbers.

Subpart B—Rules and Regulations

DEFINITIONS

1208.100 Terms defined.

ASSESSMENTS

1208.150 Procedures for postponement of collections.

AUTHORITY: The Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, 7 U.S.C. 6801 *et seq.*

SOURCE: 59 FR 67143, Dec. 29, 1994, unless otherwise noted.

Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order

DEFINITIONS

§ 1208.1 Act.

Act means the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, Pub. L. 103–190, 7 U.S.C. §§ 6801 *et seq.*, and any amendments thereto.

§ 1208.2 Consumer information.

Consumer information means any action or program that provides information to consumers and other persons on appropriate uses for cut flowers and greens under varied circumstances, or on the care and handling of cut flowers and greens.

§ 1208.3 Council.

Council means the Fresh Cut Flowers and Fresh Cut Greens Promotion Council established pursuant to § 1208.30 of this subpart and which shall be referred to as the National PromoFlor Council.

§ 1208.4 Cut flowers.

Cut flowers include all flowers cut from growing plants that are used as fresh-cut flowers and that are produced under cover or in field operations, but not including foliage plants, floral supplies, or flowering plants.

§ 1208.5 Cut greens.

Cut greens include all cultivated or noncultivated decorative foliage cut from growing plants that are used as fresh-cut decorative foliage (except Christmas trees) and that are produced

under cover or in field operations, but not including foliage plants, floral supplies, or flowering plants.

§ 1208.6 Cut flowers and greens.

The term *cut flowers and greens* means either cut flowers or cut greens, even though the cut flowers or cut greens are sold as separate commodities by a person in the floral marketing system, or cut flowers and cut greens collectively when both commodities are sold by a person in the floral marketing system.

§ 1208.7 Department.

Department means the United States Department of Agriculture.

§ 1208.8 Exempt handler.

Exempt handler means a person who would otherwise be considered to be a qualified handler except that the person's annual sales of cut flowers and greens to retailers and other exempt handlers is less than $750,000.

§ 1208.9 Fiscal year.

Fiscal year means a 12-month period recommended by the Council and approved by the Secretary.

§ 1208.10 Gross sales price.

Gross sales price means the total amount of the transaction in a sale of cut flowers and greens from a handler to a retailer or exempt handler including but not limited to charges such as containers, pre-cooling, packing, sleeving, delivery, freight, shipping, or other charges necessary to the protection and preservation of the cut flowers and greens.

§ 1208.11 Order.

Order means this subpart.

§ 1208.12 Part and subpart.

Part means the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order and all rules and regulations issued pursuant to the Act. The order itself shall be a subpart of such part.

§ 1208.13 Person.

Person means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, society, cooperative, or other legal entity.

§ 1208.14 Promotion.

Promotion means any action determined by the Secretary to advance the image, desirability, or marketability of cut flowers and greens, including paid advertising.

§ 1208.15 Producer that is a qualified handler.

Producer that is a qualified handler means an entity that is engaged: In the domestic production, for sale in commerce, of cut flowers and greens and that owns or shares in the ownership and risk of loss of the cut flowers and greens; or as a first processor of noncultivated greens, in receiving the greens from a person who gathers the greens for handling; and is subject to assessments as a qualified handler under the order.

§ 1208.16 Qualified handler.

Qualified handler means a person operating in the cut flowers and greens marketing system that sells domestic or imported cut flowers and greens to retailers and exempt handlers and whose annual sales of cut flowers and greens to retailers and exempt handlers are $750,000 or more. The term does not include a person who only physically transports or delivers cut flowers and greens. However, the term does include, but is not limited to, the following entities when they have the requisite volume of sales of cut flowers and greens as provided in §§ 1208.50 and 1208.57:

(a) A qualified wholesale handler—a person in business as a floral wholesale jobber (*i.e.*, a person who conducts a commission or other wholesale business in buying and selling cut flowers and greens) or as a floral supplier (*i.e.*, a person engaged in acquiring cut flowers and greens to be manufactured into floral articles or otherwise processed for resale) if the annual value of the qualified wholesale handlers sale of cut flowers and greens to retailers and exempt handlers is $750,000 or more;

(b) A manufacturer of bouquets for sale to retailers if the cut flowers and

greens used in such articles are a substantial portion of the value of the manufactured floral articles;

(c) A manufacturer of floral articles (other than bouquets) for sale to retailers if the cut flowers and greens used in such articles are a substantial portion of the value of the manufactured floral articles;

(d) An auction house that clears the sale of cut flowers and greens to retailers and exempt handlers through a central clearinghouse;

(e) A distribution center that is owned or controlled by a retailer if the predominant retail business activity of the retailer is floral sales. In addition to sales, non-sale transfers of cut flowers and greens by the distribution center to retail outlets, shall be counted for the purpose of applying the $750,000 minimum volume rule to the center and the value of such transfers shall be determined as provided in §§ 1208.50 and 1208.57;

(f) An importer that is a qualified handler—a person whose principal activity is the importation of cut flowers and greens into the United States (either directly or as an agent, broker, or consignee of any person or nation that produces or handles cut flowers and greens outside of the United States for sale in the United States) and who sells such cut flowers and greens to retailers and exempt handlers or directly to consumers, if the annual combined value of such sales determined as provided in §§ 1208.50 and 1208.57 totals $750,000 or more;

(g) A producer that is a qualified handler, *e.g.*, a person who produces cut flowers and greens and who sells such cut flowers and greens directly to retailers or consumers if the annual combined value of such sales determined as provided in §§ 1208.50 and 1208.57 totals $750,000 or more.

§ 1208.17 Research.

Research means market research and studies limited to the support of advertising, market development, and other promotion efforts and consumer information efforts relating to cut flowers and greens, including educational activities.

§ 1208.18 Retailer.

Retailer means a person who sells cut flowers and greens to consumers. The term includes:

(a) All retail outlets that sell cut flowers and greens to consumers including retail florists, supermarkets, and other mass market retail outlets that sell such cut flowers or greens, except distribution centers defined in § 1208.16(e) (*i.e.*, centers that are owned or controlled by a retailer if the predominant retail business activity of the retailer is floral sales and whose sales and non-sale transfers of cut flowers and greens to retail outlets total $750,000 or more, determined as provided in this subpart) even though such centers may also make direct sales to consumers.

(b) Distribution centers owned or controlled by a retailer (or distribution centers owned or controlled cooperatively by a group of such retailers) when the predominant business activity of the retailer or retailers is not the sale of cut flowers and greens to consumers; and

(c) Distribution centers independently owned but operated primarily to provide food products to retail stores.

§ 1208.19 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1208.20 Substantial portion.

Substantial portion means that portion of the total value of manufactured floral articles that represents the value of the cut flowers and greens in such articles (expressed as a percentage factor) which the Council, with the approval of the Secretary, finds to be great enough to cause such articles to be classed as cut flowers and greens under this subpart.

§ 1208.21 State.

State means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of

the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (until such time as the Compact of Free Association is ratified).

§ 1208.22 Traditional retailer.

Traditional retailer means any retailer, as defined in § 1208.18, whose primary business is the sale of floral products, including fresh cut flowers and cut greens, or who has a specific department dedicated to the sale of floral products, including fresh cut flowers and cut greens.

§ 1208.23 Traditional retail florist organization.

Traditional florist organization means membership organizations of traditional retailers with activities and membership which are nationwide in scope.

§ 1208.24 United States.

United States means the States collectively.

ESTABLISHMENT OF THE COUNCIL

§ 1208.30 Establishment and membership of the Council.

(a) A Fresh Cut Flowers and Fresh Cut Greens Promotion Council which shall be named the National PromoFlor Council is hereby established to administer the terms and provisions of this subpart. The Council shall consist of 25 members nominated by the floral industry and appointed by the Secretary, as provided in this subpart, each of whom shall have an alternate nominated and appointed in the same manner as members of the Council are nominated and appointed.

(b) The membership of the Council shall be divided as follows:

(1) 14 members and their alternates shall represent qualified wholesale handlers of domestic or imported cut flowers and greens;

(2) Three members and their alternates shall represent producers that are qualified handlers of cut flowers and greens;

(3) Three members and their alternates shall represent importers that are qualified handlers of cut flowers and greens;

(4) Three members and their alternates shall represent traditional retailers of cut flowers and greens;

(5) One member and alternate shall represent persons who produce cut flowers and greens in locations east of the Mississippi River; and

(6) One member and alternate shall represent persons who produce cut flowers and greens in locations west of the Mississippi River.

§ 1208.31 Election and appointment of members and alternates other than retailers.

(a) PromoFlor Organizing Group, Inc., an industry organizing committee, is designated as an election committee for the purpose of receiving the names of individuals who are engaged in the industry and who are prepared to serve as members (other than retailer members) of the Council or as alternates if elected as nominees and if selected by the Secretary for such positions.

(b) The election committee shall, within five (5) days of the issuance of this subpart and with the assistance of the Secretary, request the submission of names of candidates for nominees from those segments of the industry for which nominees must be selected by an election process. These segments are: qualified wholesale handlers; importers who are qualified handlers; producers of cut flowers and greens who are qualified handlers; and producers of cut flowers and greens without regard to whether they are qualified handlers. Notification of the industry of the selection process by the election committee shall be by a news release to industry publications and where appropriate, newspapers of general circulation. In order to be assured of a place on the slate of candidates, the names of candidates must be received by the election committee not later than fifteen (15) days after the date of the first such news release.

(c) Names of candidates shall be sought for the following seats on the Council:

(1) 14 members and their respective alternates to represent qualified wholesale handlers of domestic or imported

cut flowers and greens. Two such members and their respective alternates to represent the United States at large and two such members and their respective alternates to represent each of the following regions:

Region 1 (Pacific): Alaska, California, Hawaii, Oregon, Washington, the Commonwealth of the Northern Mariana Islands, Guam, the Federated States of Micronesia, American Samoa, the Republic of the Marshall Islands, and the Republic of Palau.

Region 2 (Inter-Mountain): Arizona, Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

Region 3 (North Central): Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, and Wisconsin.

Region 4 (Northeast): Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

Region 5 (Mid-Atlantic): Delaware, District of Columbia, Kentucky, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia.

Region 6 (Southeast): Alabama, Florida, Georgia, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the United States Virgin Islands.

(2) Three at-large members and their alternates to represent importers that are qualified handlers of cut flowers and greens.

(3) Three members and their alternates to represent producers of cut flowers and greens that are qualified handlers of cut flowers and greens. There shall be one such member and alternate from each of the following production areas:

Production Area 1: California.

Production Area 2: Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming.

Production Area 3: Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

(4) Two members and their respective alternates to represent persons who produce cut flowers and greens in locations east and west of the Mississippi River, respectively. There shall be one such member and alternate from the east, and one such member and alternate from the west.

(d) Names of candidates for nominees may be submitted by state, regional (either regions within a state or regions that include more than one state as appropriate), or national industry organizations, provided that the organization has members engaged in the appropriate segment of the industry and from the region or production area if applicable, or by petition. The names of candidates submitted by an industry organization shall be accompanied by statements showing the role of the organization in the industry and general information about the membership it represents. No industry organization may submit more than two names of candidates for each seat on the Council. The names of candidates submitted by petition shall be accompanied by petitions in support of such candidate, signed by not less than ten (10) persons engaged in the appropriate segment of the industry and from the region or production area, if applicable, that the candidate will represent if ultimately selected by the Secretary. Submission of names of all candidates, whether by organizations or by petition, must include a certification by the candidate that the candidate is within the segment of the industry and the region or production area for which the candidate is nominated and, if elected as a nominee and if subsequently appointed by the Secretary, the candidate is willing to serve as a member or alternate member on the Council.

(e) The names of candidates so submitted shall be reviewed and organized by the election committee for the preparation of slates of candidates. Separate slates for each segment and region of the industry shall be prepared as appropriate. There must be at least four candidates for each position on the Council for which nominees must be selected by election. No candidate may seek nomination for more than one seat on the Council. In a case where a candidate is nominated more than once, the election committee will decide which place on the ballot the candidate's name will appear. If insufficient candidates have been proposed for any seat, the election committee shall

select additional candidates as required. The slates shall be prepared not later than 5 days after the date for receiving names of candidates by the election committee.

(f) After all candidates have been listed on the slates of candidates, the slates shall be supplied to an independent certified public accounting (CPA) firm contracted by the election committee. The ballots shall be printed and distributed by the CPA firm by U.S. mail, or other means selected by the election committee, not later than 15 days after the slates of candidates are received from the election committee. To the maximum extent practicable, ballots will be distributed to all persons who are eligible to vote for candidates under this subpart in the segment of the industry, the region, or in the United States as a whole, as applicable, to which the ballot pertains. Ballots that are not returned to the CPA firm within 20 days shall be declared invalid. The votes for each candidate on the ballots shall be tallied by the CPA firm at the end of the voting period and the results furnished to the election committee. The election committee shall issue a news release setting forth the names of the candidates and the number of votes received by each candidate within 5 days after the voting period has ended. Those candidates on each of the ballots who rank first, second, third, and fourth in the number of votes received for each seat on the Council shall be declared the nominees for each such seat.

(g) The names of those declared the nominees for each of the seats on the Council representing the various segments of the industry and the designated regions or production areas, where applicable, shall be submitted to the Secretary in order of rank with the number of votes received by each such nominee shown after the nominee's name and with the recommendation that the nominee with the most votes for each of such seats be declared the member of the Council and the nominee with the next greatest number of votes for each of such seats be declared the alternate member. The Secretary shall then appoint from the nominees so provided the members and their alternates for each of such seats on the Council.

(h) Subsequent elections of nominees and appointment of members and alternates as terms expire shall be conducted by the Council or the Council staff in the manner similar to that described above except that the Council shall act as the election committee for which provision is made in this section. The nomination and election process shall be completed at least 90 days before the beginning of each nominee's term of office.

(i) The Council shall periodically review the cut flower and greens market in the United States for changes in the geographic distribution of importing, producing, and marketing facilities and shall, if appropriate, recommend changes in the regions and production areas described in this section to the Secretary for approval.

§ 1208.32 Designation and appointment of retailer members and alternates.

(a) Four nominations for one of the traditional retailer members of the Council and that member's alternate shall be received from the American Floral Marketing Council (AFMC) or a successor entity.

(b) Four nominations for each of two members of the Council and their alternates shall be received from national traditional retail florist organizations other than the AFMC. In order to be eligible to submit nominations for members and alternates to serve on the Council, such organizations must certify that their activities and membership are nationwide in scope. No more than four nominations for each seat may be submitted by each organization.

(c) The Secretary shall choose from among the names submitted by the AFMC the names of the member and alternate who shall fill the seat on the Council representing the AFMC. The Secretary shall choose from among the names submitted by national traditional retail florist organizations other than the AFMC the two members and their alternates who shall fill the other two seats on the Council representing traditional retailers.

§ 1208.33 Failure to nominate.

If any group of qualified wholesale handlers, producers that are qualified handlers, importers that are qualified handlers, persons who produce cut flowers and greens, or traditional retailers fails to nominate individuals for appointments as members or alternates of the Council, the Secretary may appoint individual(s) from the appropriate segment(s), region(s), or area(s) of the industry to fill the vacancy or vacancies. The failure of any nominee to promptly indicate the nominee's willingness to serve in such manner as may be prescribed by the Secretary shall be treated as a failure to nominate.

§ 1208.34 Term of office and compensation.

(a) The term of office for each member or alternate member of the Council shall be three years. As provided in the Act, the initial appointments on the Council shall be as follows: nine of the member appointments shall be for two-year terms, eight of the appointments shall be for three-year terms, and eight of the appointments shall be for four-year terms. Alternate members shall have the same terms of office as their respective members. The term of office on the initial Council shall be apportioned as follows:

(1) One of the two qualified wholesale handler members representing each of Regions 1, 2, 4, and 5 shall serve two-year terms of office; one of the two qualified wholesale handler members representing each of Regions 3, 4, and 6 shall serve three-year terms of office; and one of the two qualified wholesale handler members representing each of Regions 1, 2, 3, 5, and 6 shall serve four-year terms of office.

(2) The two qualified wholesale handler members representing the United States at large shall serve terms of office of two years and three years respectively.

(3) The members representing producers that are qualified handlers from Production Areas 1 and 2 shall serve three-year terms of office, and the member representing producers that are qualified handlers from Production Area 3 shall serve a four-year term of office.

(4) The three members representing importers that are qualified handlers shall serve terms of office of two, three, and four years respectively.

(5) The members representing producers that produce cut flowers and greens east and west of the Mississippi River shall each serve two-year terms of office.

(6) The member representing retailers nominated by the AFMC shall serve a two-year term of office. The two members representing retailers not nominated by the AFMC shall serve three-year and four-year terms of office respectively.

(b) No member of the Council may serve more than two consecutive terms of three years, except that any member serving an initial term of four years or two years may serve an additional term of three years.

(c) The term of office for the initial Council shall begin immediately following appointment by the Secretary. Should the term of office of the initial Council begin before January 1, 1995, the time between appointment and January 1, 1995, shall not count towards the initial term of office. Should the term of office of the initial Council begin later than January 1, 1995, all time until the following January will count as a full year toward the terms of office set out in this section. In subsequent years, the term of office shall begin on January 1 or such other period which may be recommended by the Council and approved by the Secretary.

(d) Members of the Council shall serve without compensation, but each member or alternate member acting in place of a member shall be reimbursed for the expenses incurred in performing duties as a member of the Council.

§ 1208.35 Vacancies.

(a) Should any Council member position become vacant, the alternate of that member shall automatically assume the position of said member. Candidates for the vacant alternate member position which resulted from the alternate filling the vacant member position shall be nominated in the manner specified in §§1208.31 and 1208.32. *Provided,* That a vacancy will not be required to be filled if the unexpired term is less than six months.

(b) Should the positions of both a member and such member's alternate become vacant, Candidates to serve the unexpired terms of office for such member and alternate shall be nominated in the manner specified in §§ 1208.31 and 1208.32. *Provided*, That a vacancy will not be required to be filled if the unexpired term is less than six months.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, if a member of the Council fails to submit reports and remit assessments required under this part, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds that the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Council, a member may be removed by the Secretary upon a showing of adequate cause, if the Secretary determines that the person's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1208.36 Procedure.

(a) Thirteen (13) Council members, including alternates acting in place of members of the Council, shall constitute a quorum: Provided, That such alternates shall serve only when the member is absent from a meeting or is disqualified. Any action of the Council shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In lieu of voting at an assembled meeting, and, when in the opinion of the chairperson of the Council such action is considered necessary, or for matters of an emergency nature when there is not enough time to call an assembled meeting, the Council may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, facsimile, or by other means of communication: *Provided*, That each member or alternate acting for a member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Council minutes.

§ 1208.37 Executive committee.

(a) The Council is authorized to appoint an executive committee of not more than nine persons from among its members. Initially, the executive committee shall be composed of the following:

(1) Four members representing qualified wholesale handlers;

(2) Two members representing producers that are qualified handlers;

(3) Two members representing importers that are qualified handlers; and

(4) One member representing traditional retailers.

(b) After the initial appointments, each appointment to the executive committee shall be made so as to ensure that the committee reflects, to the maximum extent practicable, the membership composition of the Council as a whole.

(c) Each initial appointment to the executive committee shall be for a term of two years. After the initial appointments, each appointment to the executive committee shall be for a term of one year.

(d) The Council may delegate to the executive committee the authority of the Council under this subpart to hire and manage staff and conduct the routine business of the Council consistent with such policies as are determined by the Council.

ACTIVITIES OF THE COUNCIL

§ 1208.40 Duties of the Council.

The Council shall have the following duties, in addition to the duties specified in other sections of this subpart:

(a) Administer this subpart in accordance with the terms and provisions of this subpart;

(b) Make rules and regulations to effectuate the terms and provisions of this subpart;

(c) Appoint members of the Council to serve on the executive committee, as provided in § 1208.37;

(d) Employ such persons as the Council determines are necessary, and set the compensation and define the duties of the persons;

(e) Develop budgets for the implementation of this subpart and submit the budgets to the Secretary for approval, and propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval plans and projects for cut flowers and greens promotion, consumer information, or related research;

(f) Implement plans and projects for cut flowers and greens promotion, consumer information, or related research, or contract or enter into agreements with appropriate persons to implement the plans and projects and pay the costs of the implementation of contracts and agreements with funds received under this subpart;

(g) Keep minutes, books, and records which clearly reflect all of the acts and transactions of the Council. Minutes of all meetings shall be promptly provided to the Secretary;

(h) Evaluate ongoing and completed plans and projects for cut flowers and greens promotion, consumer information, or related research;

(i) Receive, investigate, and report to the Secretary complaints of violations of this subpart and direct that the staff of the Council periodically review the list of importers of cut flowers and greens provided by the Customs Service to determine whether persons on the list are subject to this subpart;

(j) Recommend to the Secretary amendments to this subpart;

(k) Invest, pending disbursement under a plan or project, funds collected through assessments only in: Obligations of the United States or any agency of the United States, general obligations of any State or any political subdivision of a State, any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or obligations fully guaranteed as to principal and interest by the United States. Income from any such invested funds may be used only for a purpose for which the invested funds may be used.

(l) Prepare and submit to the Secretary such reports as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Council monthly, or at such times as prescribed by the Secretary. Monthly financial statements shall be submitted to the Department and shall include at least:

(1) A balance sheet, and

(2) An expense budget comparison showing expenditures during the month, year-to-date expenditures, and an unexpended budget. Upon request, a summary of checks issued by the Council is to be made available. Reports shall be submitted within 30 days after the end of each month.

(m) To cause the books of the Council to be audited by an independent certified public accountant at the end of each fiscal period, and at such other times as the Council or the Secretary may deem necessary. The report of each audit shall show the receipt and expenditure of funds collected pursuant to this part, and shall be submitted to the Secretary.

(n) To give the Secretary the same notification, written or oral, as provided to Council members concerning all conference calls and meetings, including executive, advisory, subcommittee, and other meetings related to Council matters, and to grant the Secretary access to all such calls and meetings;

(o) To follow the Department's equal opportunity/civil rights policies; and

(p) Provide the Secretary such information as the Secretary may require.

§ 1208.41 Budgets and expenses

(a) The Council shall promptly adopt and forward to the Secretary for approval its determination of the beginning and ending dates of an annual fiscal period to be used by the Council for budgeting and accounting purposes.

(b) The Council shall submit annual budgets of its anticipated expenses and disbursement in the administration of this subpart, including the projected costs for the promotion of cut flowers and greens, consumer information, and related research plans and projects to the Secretary for approval. The first budget, which shall be submitted promptly after the effective date of this subpart, shall cover such period as may remain before the beginning of the next fiscal year. If such fiscal period is 90 days or less, the first budget shall cover such period, as well as the next fiscal year. Thereafter, the Council

shall submit budgets for each succeeding fiscal year not less than 30 days before the beginning of such fiscal year.

(c) The Council is authorized to incur such expenses (including provision for a reasonable reserve for operating contingencies) as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to § 1208.50, or other funds available to the Council.

(d) The Council shall reimburse the Secretary, from assessments collected pursuant to § 1208.50, or from other funds available to the Council, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after December 29, 1994.

(e) The Council shall establish an interest-bearing escrow account with a bank that is a member of the Federal Reserve System and shall deposit in such account an amount equal to the percentage determined by the Council to be held in reserve for the payment of refunds pursuant to § 1208.54.

(f) The Council may, with the approval of the Secretary, borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§ 1208.42 Plans, projects, budgets, and contracts.

The Council shall develop and implement plans and projects for the promotion of, and the dissemination of information about, cut flowers and greens, as well as for research related to cut flowers and greens in accordance with the following:

(a) The Council shall develop, or contract for the development of, plans and projects for advertising, sales promotion, other promotion, and for dissemination of consumer information, with respect to cut flowers and greens, and may disburse such funds as necessary for these purposes after such plans or projects have been submitted to, and approved by, the Secretary. Any such plan or project shall be directed toward increasing the general demand for cut flowers and greens and shall not make reference to a private brand or trade name, point of origin, or source of supply, except that the Council may offer such plans and projects of the Council for use by commercial parties such as local, regional, State, or national floral industry organizations, and then only under terms and conditions prescribed by the Council and approved by the Secretary. No plan or project may make use of unfair or deceptive acts or practices with respect to quality or value.

(b) The Council shall develop, or contract for the development of, plans and projects for research on the development of both established and new markets for cut flowers and greens and for research with respect to postharvest physiology, distribution, sale, marketing, use, and promotion of cut flowers and greens, as well as the dissemination of consumer information concerning cut flowers and greens. The Council is authorized to develop, or contract for the development of, such plans and projects for other research with respect to the marketing, promotion, and dissemination of information about cut flowers and greens as it finds appropriate. The Council may disburse such funds as necessary for these purposes after such plans or projects have been submitted to, and approved by, the Secretary.

(c) The Council shall submit to the Secretary, for approval before implementation, any contracts for development of plans and projects, as well as such plans and projects as may be developed by or approved by the Council for advertising, promotion, dissemination of information, and research. All such submissions to the Secretary shall be accompanied by a proposed budget showing the estimated expense to be incurred and the availability of revenue from which such expense may be paid. On approval of any such submission, the Council may proceed with the contract, plan or project and incur the expenses necessary to carry it out. Contracts or agreements to be submitted to the Secretary and entered into if approved by the Secretary shall,

among such other matters as may be required, provide that:

(1) The contracting or agreeing party shall develop and submit to the Council a plan or project, together with a budget that includes the estimated costs to be incurred for the plan or project;

(2) The plan or project shall become effective on the approval of the Secretary; and

(3) The contracting or agreeing party shall:

(i) Keep accurate records of all of the transactions of the party;

(ii) Account for funds received and expenses;

(iii) Make periodic reports to the Council of activities conducted; and

(iv) Make such other reports as the Council or the Secretary may require.

(d) The Council, from time to time, may seek advice from and consult with experts from the production, import, wholesale, and retail segments of the cut flowers and greens industry to assist in the development of promotion, consumer information, and related research plans and projects. For these purposes, the Council may appoint special committees composed of persons other than Council members. A committee so appointed may not provide advice or recommendations to a representative of an agency, or an officer, of the Federal Government, and shall consult directly with the Council.

§ 1208.43 Other contracts and agreements.

The Council may enter into contracts or agreements for administrative services, including contracts of employment, as may be required to conduct its business in accordance with such fiscal period budgets as may have been approved by the Secretary. To the extent appropriate to the contract involved, contracts entered into by the Council under the authority of this section shall contain provisions comparable to those described in § 1208.42(c).

ASSESSMENTS

§ 1208.50 Assessments.

(a) Each qualified handler, as defined in § 1208.16, shall pay to the Council an assessment in an amount determined in accordance with this subpart, on each sale of cut flowers and greens to a retailer or an exempt handler (as defined in § 1208.8) and on each non-sale transfer of cut flowers and greens to a retailer by a qualified handler that is a distribution center; as well as each direct sale of cut flowers and greens to a consumer by a producer that is a qualified handler, or by an importer that is a qualified handler. Such assessments shall be remitted by each qualified handler to the Council or its agent within 60 days after the end of the month in which the sale or non-sale transfer subject to assessment under this subpart took place. Such assessments shall be paid at the following rates:

(1) During the first three years after December 29, 1994.

(i) Except as provided in paragraph (a)(1)(ii) of this section, the rate shall be one-half of 1 (0.5) percent of the gross sales price of the cut flowers and greens sold;

(ii) In the case of non-sale transfers to a retailer by a qualified handler that is a distribution center and in the case of direct sales by importers or producers, the rate shall be one-half of 1 (0.5) percent of the amount of each transaction's valuation for assessment as provided in paragraph (b);

(2) After the first three years from December 29, 1994, the uniform assessment rate may be increased or decreased annually by not more than one-quarter of 1 (0.25) percent of the gross sales price of a product sold; or in the case of other transactions the amount of such transactions, except that the assessment rate may not exceed 1 percent of the gross sales price or the transaction amount. Changes in the rate of assessment may only be made if such changes are adopted by a two-thirds majority vote of the Council and approved by the Secretary (after public notice and opportunity for comment as provided in the Act) as being necessary to carry out the objectives of the Act. Any such change so approved by the Secretary may be put into effect without a referendum but shall be announced not less than 30 days prior to the beginning of a fiscal year.

(b) Each non-sale transfer of cut flowers and greens to a retailer from a

qualified handler that is a distribution center shall be treated as a sale of cut flowers and greens to a retailer and shall be assessable. Each direct sale of cut flowers and greens to a consumer by a producer who is a qualified handler or an importer who is a qualified handler shall be assessable. These transactions shall be determined to have the following valuations for assessment purposes:

(1) In the case of a non-sale transfer of cut flowers and greens from a distribution center that is a qualified handler and each direct sale of cut flowers and greens to a consumer by an importer that is a qualified handler, the amount of the valuation of the cut flowers and greens for assessment purposes shall be the price paid by the distribution center or importer to acquire the cut flowers and greens, and determined by multiplying the acquisition price by a uniform factor of 1.43 to represent the markup of a wholesale handler on a sale to a retailer.

(2) In the case of a direct sale to a consumer by a producer who is a qualified handler, the valuation of the cut flowers and greens for assessment purposes shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform factor of 0.50 to represent the cost of producing the article and the markup of a wholesale handler on a sale to a retailer.

(3) The Council may consider and adopt changes in the uniform factors specified in paragraphs (b) (1) and (2) of this section. Any such change shall not become effective until it has been adopted by a majority vote of the Council and approved by the Secretary after public notice and opportunity to comment on such change as provided in the Act. Changes so adopted and approved shall become effective at the beginning of the next fiscal year.

(c) The collection of assessments shall commence on or after a date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be remitted, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments in an interest bearing account until the Council is constituted, and the funds may be transferred to the Council.

(d) Assessments shall be determined on the basis of the gross sales price. The Council, with the approval of the Secretary, may make uniform adjustments in determining the gross sales price when such adjustments reflect changes in trade practices or ensure equitable treatment of all qualified handlers paying assessments.

(e) No assessments may be levied on any sale of cut flowers and greens for export from the United States. The Council is authorized to establish procedures for the verification of exports.

(f) In general, assessment funds (less refunds, if any) shall be used:

(1) For payment of costs incurred in implementing and administering this subpart;

(2) To provide for a reasonable reserve to be maintained from assessments to be available for contingencies; and

(3) To cover the administrative costs incurred by the Secretary in implementing and administering this Act.

NOTE TO §1208.50: The requirement to pay assessments is terminated as of July 29, 1997.

[59 FR 67143, Dec. 29, 1994, as amended at 62 FR 40257, July 28, 1997]

§1208.51 Influencing governmental action.

No funds collected by the Council shall in any manner be used for the purpose of influencing legislation or government action or policy, except to develop and recommend to the Secretary amendments to this subpart.

§1208.52 Charges for late payments.

Any assessment due the Council pursuant to §1208.50 that is not paid on time shall be increased 1.5 percent each month it remains unpaid beginning with the day following the date such assessment was due. If not paid in full, any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a

failure to submit a report when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Council shall be based on the applicable postmark date or the date actually received by the Council, whichever is earlier.

§ 1208.53 Adjustment of accounts.

Whenever the Council or the Secretary determines through an audit of a person's reports, records, books, or accounts or through some other means that additional money is due the Council or that money is due such person from the Council, such person shall be notified of the amount due. The person shall then remit any amount due the Council by the next date for remitting assessments. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

§ 1208.54 Refunds of assessments and escrow account.

(a) Any qualified handler may demand and receive from the escrow account, subject to the limitation on such payments provided in paragraph (c), a one-time refund of any assessments paid by or on behalf of the handler if the handler requests the refund before the initial referendum on this subpart is held and this subpart is rejected by the voters when it is submitted to the referendum. Such a refund will be paid only if all of the following conditions are met:

(1) The handler has paid the assessments sought to be refunded and has submitted proof of such payment;

(2) The handler does not support the program established under this subpart and so states in the handler's demand for a refund;

(3) The handler's demand for a refund is made on a form specified by the Council and filed not less than 10 days prior to the date when the initial referendum, conducted pursuant to § 1208.60(a) to ascertain whether this subpart shall remain in effect, is scheduled to begin; and

(4) This subpart is not approved by a simple majority of the votes cast by qualified handlers in the initial referendum.

(b) The Council shall establish an escrow account to be used for assessment refunds, as needed, and shall place into the account an amount equal to 10 percent of the total amount of assessments collected during the period beginning on December 29, 1994 and ending on the date the results of the initial referendum are issued and the initial referendum is completed.

(c) If the amount in the escrow account is not sufficient to refund the total amount of assessments demanded by all qualified handlers determined eligible for refunds and this subpart is not approved in the referendum, the Council shall prorate the amount of all such refunds among all eligible qualified handlers that demand the refund. If there is any amount in excess of the amount needed to pay refunds and expenses, it shall be returned pro rata to those who paid assessments. If this subpart is approved in the referendum, there shall be no refunds made, and all funds in the escrow account shall be returned to the Council for use by the Council in accordance with the other provisions of this subpart.

§ 1208.55 Postponement of collections.

(a) The Council may grant a postponement of the payment of an assessment under this subpart for any qualified handler that establishes that it is financially unable to make the payment. In order that a qualified handler that is financially unable to pay an assessment may have the opportunity to petition the Council to postpone payment of such an assessment, as provided in the Act, the Council shall develop forms and procedures for this purpose as expeditiously as possible and submit them to the Secretary for approval and issuance after notice and an opportunity for public comment thereon. Such procedures shall, among other things, require that the handler demonstrate the handler's inability to pay through the submission of an opinion prepared by an independent certified public accountant (at the handler's expense) and any other documentation specified therein to the effect that the handler is insolvent or will be unable to continue to operate if

the handler is required to pay the assessment when due.

(b) The procedures for obtaining a postponement of payment to be developed by the Council for submission to the Secretary shall also include provisions with respect to the period of postponement, the conditions of payment that may be imposed and the basis, if any, on which further extensions of the time for payment will be granted so as to appropriately reflect the demonstrated needs of the qualified handler.

§ 1208.56 Determinations.

(a) The Council is authorized to make the determinations required by this subpart as to the status of persons as qualified handlers and exempt handlers including determinations of the status of persons as qualified wholesale handlers, distribution centers that are qualified handlers, producers that are qualified handlers, importers that are qualified handlers, as well as such other determinations of status and facts as may be required for the effective administration of this subpart. Based on such determinations, the Council from time to time shall publish lists of exempt handlers who are not required to pay assessments, and lists of qualified handlers who are required to pay assessments under this subpart.

(b) For the purpose of applying the $750,000 annual sales limitation to a specific person in order to determine the status of the person as a qualified handler or an exempt handler or to a specific facility in order to determine the status of the facility as an eligible separate facility for the purpose of referenda, the Council is authorized to determine the annual sales volume of a person or facility.

(c) Any such determination shall be based on the sales of cut flowers and greens by the person or facility during the most recently-completed calendar year, except that in the case of a new business or other operation for which complete data on sales during all or part of the most recently-completed calendar year are not available to the Council, the determination may be made using an alternative time period or other alternative procedures as the Council may find appropriate. In making such determinations, the Council is authorized to make attributions in accordance with paragraphs (c) (1) through (4) of this section and for the purpose of determining the annual sales volume of a person or a separate facility of a person, sales attributable to a person shall include:

(1) In the case of an individual, sales attributable to the spouse, children, grandchildren, parents, and grandparents of the person;

(2) In the case of a partnership or member of a partnership, sales attributable to the partnership and other partners of the partnership;

(3) In the case of an individual or a partnership, sales attributable to any corporation or other entity in which the individual or partnership owns more than 50 percent of the stock or (if the entity is not a corporation) that the individual or partnership controls; and

(4) In the case of a corporation, sales attributable to any corporate subsidiary or other corporation or entity in which the corporation owns more than 50 percent of the stock or (if the entity is not a corporation) that the corporation controls.

(d) The Council is also authorized to attribute any stock ownership interest as may be required to carry out this subpart. In doing so a stock ownership interest in the entity that is owned by the spouse, children, grandchildren, parents, grandparents, or partners of an individual, or by a partnership in which a person is a partner, or by a corporation more than 50 percent of the stock of which is owned by a person, shall be treated as owned by the individual or person.

(e) For the purpose of this subpart, the Council, with the approval of the Secretary, may require a person who sells cut flowers and greens to retailers to submit reports to the Council on annual sales by the person and on stock ownership.

SUSPENSION OR TERMINATION

§ 1208.60 Suspension and termination.

If the Secretary finds that this subpart, or any provision of this subpart, obstructs or does not tend to effectuate

the policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or the provision of this subpart under such terms as the Secretary determines are appropriate. Such termination or suspension shall not be considered an order within the meaning of such term in the Act.

§ 1208.61 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the assets of the Council. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Council, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contract or agreement entered into by it under this subpart;

(3) Make refunds from the escrow account to those persons who applied for refunds of assessments paid and who are eligible to receive such refunds. Such refunds shall be made within 30 days after the referendum results are issued.

(4) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Council and of the trustees, to such persons as the Secretary may direct; and

(5) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Council or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1208.62 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation or rule issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such regulation or rule;

(b) Release or extinguish any violation of this subpart or any such regulation or rule; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

REPORTS, BOOKS, AND RECORDS

§ 1208.70 Books, records, reports, cost control, and audits of the Council.

(a) The Council shall maintain the books and records that the Secretary may require to account for the receipt and disbursement of all funds entrusted to the Council in accordance with the provisions of this subpart, and shall prepare and submit to the Secretary, from time to time as prescribed by the Secretary, all reports that the Secretary may require.

(b) The Council shall, as soon as practicable after December 29, 1994 and after consultation with the Secretary and other appropriate persons, implement a system of cost controls based on normally accepted business practices that will ensure that the annual budgets of the Council include only amounts for administrative expenses that cover the minimum administrative activities and personnel needed to properly administer and enforce this subpart, and conduct, supervise, and evaluate plans and projects under this subpart.

(c) The Council shall cause the books and records of the Council to be audited by an independent certified public accountant at the end of each fiscal year. All audits must be performed in accordance with either standards issued by the American Institute of Certified Public Accountants or by the General Accounting Office. A report of each audit shall be submitted to the Secretary.

§ 1208.71 Reports, books, and records of persons subject to this subpart.

(a) Each qualified handler shall prepare and file reports containing such information as may be required by the Council with the approval of the Secretary. Such information shall include:

(1) Data showing the volume of sales and non-sale transfers of cut flowers and greens made during the reporting period;

(2) The amount of the assessment on such sales or non-sale transfers; and

(3) Any other data that may be required by the Council with the approval of the Secretary.

(b) Each person subject to this subpart shall maintain and make available for inspection by agents of the Council and the Secretary such books and records as are determined by the Council with the approval of the Secretary, as necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1208.72 Confidential treatment.

(a) Information obtained from books, records, or reports required to be maintained or filed under the Act and this subpart shall be kept confidential by all persons, including agents and former agents of the Council, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Council members. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this paragraph shall be deemed to prohibit:

(1) The issuance of general statements, based upon the reports, of the number of persons subject to this subpart or statistical data collected from such reports, which statements do not identify the information furnished by any such persons, and

(2) The publication, by direction of the Secretary, of the name of any individual, group of individuals, partnership, corporation, association, cooperative, or other entity that has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart so violated.

(b) No information on how a person voted in a referendum conducted under the Act shall be made public.

MISCELLANEOUS

§ 1208.80 Right of the Secretary.

All fiscal matters, programs or projects, by-laws, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

§ 1208.81 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgement, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1208.82 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations

developed through the use of funds received by the Council under this subpart shall be the property of the United States Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations, inure to the benefit of the Council. Upon termination of this subpart, § 1208.61 shall apply to determine disposition of all such property.

§ 1208.83 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1208.84 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1208.85 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511, is OMB number 0581–0096, except Council member nominee information sheets are assigned OMB number 0505–0001.

Subpart B—Rules and Regulations

SOURCE: 61 FR 30501, June 17, 1996, unless otherwise noted.

DEFINITIONS

§ 1208.100 Terms defined.

Unless otherwise defined in this subpart, definitions or terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order of this part.

ASSESSMENTS

§ 1208.150 Procedures for postponement of collections.

(a) For a request for postponement of the payment of assessments to be granted, the qualified handler requesting such postponement must: Submit a written opinion from a Certified Public Accountant stating that the handler making the request is insolvent or will be unable to continue to operate if the handler is required to pay the assessments when due; and submit copies of the handler's last three (3) years' federal tax returns. The request must be in writing no later than 30 days after the assessment for the first month of the requested postponement period is due. Applications postmarked after the 30-day due date will not be considered by the Council. The qualified handler must file handler reports with the Council for each month during the postponement period. The postponement period may not exceed six (6) months unless an extension is requested and granted by the Council. Only one extension of up to six (6) months may be granted. Within the postponement period, the qualified handler will be exempt from paying assessments beginning with the first month for which the request for postponement is filed with the Council and for no more than six (6) months unless an extension is granted. The same procedures used for the initial request will be used to grant any extension. The written request must specify:

(1) A reason for the request;

(2) Detailed information concerning the qualified handler's name, address, and telephone and fax numbers;

(3) The month(s) for which the request is made;

(4) Assessments due per month or gross sales per month;

(5) Total assessments due;

(6) The percent or amount of the outstanding assessment to be paid each month after the postponement of payment is granted; and

(7) The starting and ending date for the payment of assessments due.

(b) At the end of the postponement period, the qualified handler must pay the percent or amount outstanding of assessments agreed upon each month

as well as any other assessments which are due. An extension of time for payment of postponed assessments, if granted, will be for the same months previously requested and granted. The extension must not exceed six (6) months. If a qualified handler requests that another period be postponed, that handler must file another application for the postponement of the assessment for the second period using the same procedure which was followed in requesting the first postponement. A qualified handler may request the postponement of the payment of assessments for a maximum of two periods of up to six (6) months each. The payment applicable to the second postponement period, if granted, may not be extended, and the payment period must not exceed the length of the postponement period. Payment of the total assessments due, when an extension and a second period are granted, must begin within one (1) year after the first postponed month's assessments were originally due. No additional postponements would be considered by the Council until the assessments owed for the first two periods have been paid. The Council may conduct an audit of the qualified handler's records at any time to determine whether the qualified handler will be unable to continue to operate if the handler is required to pay the assessments due. In the event that postponed assessments are not paid when due, the Council can demand that all such assessments due be paid in their entirety.

(c) Charges for late payment of assessments as described in §1208.52 will not be imposed on assessments for which postponement of payment has been granted.

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

DEFINITIONS

Sec.
1209.1 Act.
1209.2 Commerce.
1209.3 Consumer information.
1209.4 Council.
1209.5 Department.
1209.6 First handler.
1209.7 Fiscal year.
1209.8 Importer.
1209.9 Industry information.
1209.10 Marketing.
1209.11 Mushrooms.
1209.12 On average.
1209.13 Part and subpart.
1209.14 Person.
1209.15 Producer.
1209.16 Programs, plans, and projects.
1209.17 Promotion.
1209.18 Region.
1209.19 Research.
1209.20 Secretary.
1209.21 State and United States.

MUSHROOM COUNCIL

1209.30 Establishment and membership.
1209.31 Nominations.
1209.32 Acceptance.
1209.33 Appointment.
1209.34 Term of office.
1209.35 Vacancies.
1209.36 Procedure.
1209.37 Compensation and reimbursement.
1209.38 Powers.
1209.39 Duties.

PROMOTION, RESEARCH, CONSUMER INFORMATION, AND INDUSTRY INFORMATION

1209.40 Programs, plans, and projects.

EXPENSES AND ASSESSMENTS

1209.50 Budget and expenses.
1209.51 Assessments.
1209.52 Exemption from assessment.
1209.53 Influencing governmental action.

REPORTS, BOOKS, AND RECORDS

1209.60 Reports.
1209.61 Books and records.
1209.62 Confidential treatment.

MISCELLANEOUS

1209.70 Right of the Secretary.
1209.71 Suspension or termination.
1209.72 Proceedings after termination.
1209.73 Effect of termination or amendment.
1209.74 Personal liability.
1209.75 Patents, copyrights, inventions, publications, and product formulations.
1209.76 Amendments.
1209.77 Separability.

Subpart B—Rules and Regulations

DEFINITIONS

1209.200 Terms defined.

NOMINATION PROCEDURES

1209.231 Nominations.
1209.233 Regional caucus chairpersons.

1209.235 Mail balloting.
1209.237 Appointment.

GENERAL

1209.239 Financial statements.

ASSESSMENTS

1209.251 Payment of assessments.
1209.252 Exemption procedures.

REPORTS

1209.260 Reports.

MISCELLANEOUS

1209.280 OMB control numbers.

Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order

1209.300 General.
1209.301 Definitions.
1209.302 Voting.
1209.303 Instructions.
1209.304 Subagents.
1209.305 Ballots.
1209.306 Referendum report.
1209.307 Confidential information.

AUTHORITY: 7 U.S.C. 6101–6112.

SOURCE: 57 FR 31951, July 20, 1992, unless otherwise noted.

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

SOURCE: 58 FR 3449, Jan. 8, 1993, unless otherwise noted.

DEFINITIONS

§ 1209.1 Act.

Act means the Mushroom Promotion, Research, and Consumer Information Act of 1990, subtitle B of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 7 U.S.C. 6101–6112, and any amendments thereto.

§ 1209.2 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1209.3 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

§ 1209.4 Council.

Council means the administrative body referred to as the Mushroom Council established under § 1209.30 of this subpart.

§ 1209.5 Department.

Department means the United States Department of Agriculture.

§ 1209.6 First handler.

First handler means any person who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

§ 1209.7 Fiscal year.

Fiscal year means the 12-month period from January 1 to December 31 each year, or such other period as recommended by the Council and approved by the Secretary.

§ 1209.8 Importer.

Importer means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

§ 1209.9 Industry information.

Industry information means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

§ 1209.10 Marketing.

(a) *Marketing* means the sale or other disposition of mushrooms in any channel of commerce.

(b) *To market* means to sell or otherwise dispose of mushrooms in any channel of commerce.

§ 1209.11 Mushrooms.

Mushrooms means all varieties of cultivated mushrooms grown within the United States and marketed for the fresh market, or imported into the United States and marketed for the fresh market, except such term shall

not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed in such manner as the Council, with the approval of the Secretary, may determine.

§ 1209.12 On average.

On average means a rolling average of production or imports during the last two fiscal years, or such other period as may be determined by the Secretary.

§ 1209.13 Part and subpart.

Part means this mushroom promotion and research order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the mushroom promotion and research order.

§ 1209.14 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1209.15 Producer.

Producer means any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

§ 1209.16 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1209.17 Promotion.

Promotion means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

§ 1209.18 Region.

Region means one of the described geographic subdivisions of the production areas described in § 1209.30 (b) or as later realigned or reapportioned pursuant thereto, or the import region described in § 1209.30(c).

§ 1209.19 Research.

Research means any type of study to advance the image, desirability, safety, marketability, production, product development, quality, or nutritional value of mushrooms.

§ 1209.20 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1209.21 State and United States.

(a) *State* means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *United States* means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

MUSHROOM COUNCIL

§ 1209.30 Establishment and membership.

(a) There is hereby established a Mushroom Council of not less than four or more than nine members. The Council shall be composed of producers appointed by the Secretary under § 1209.33, except that, as provided in paragraph (c), importers shall be appointed by the Secretary to the Council under § 1209.33 once imports, on average, reach at least 35,000,000 pounds of mushrooms annually.

(b) For purposes of nominating and appointing producers to the Council, the United States shall be divided into four geographic regions and the number of Council members from each region shall be as follows:

(1) *Region 1:* including Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Ohio, Kentucky, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Minnesota, North Dakota, South Dakota, Montana, Colorado, and Wyoming—2 Members.

(2) *Region 2:* including Pennsylvania, Delaware, New Jersey, the District of Columbia, West Virginia, Virginia, and Maryland—3 Members.

(3) *Region 3:* including Washington, Oregon, Idaho, Utah, Arizona, California, Nevada, Alaska, and Hawaii—3 Members.

(4) *Region 4:* including New Mexico, Texas, Oklahoma, Arkansas, Louisiana, Alabama, Mississippi, Georgia, Tennessee, North Carolina, South Carolina, Florida, and the Commonwealth of Puerto Rico—1 Member.

(c) Importers shall be represented by a single, separate region, referred to as Region 5, consisting of the United States as defined in §1209.21(b) when imports, on average, equal or exceed 35,000,000 pounds of mushrooms annually.

(d) At least every five years, and not more than every three years, the Council shall review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years, and, based on such review, shall recommend to the Secretary reapportionment of the regions established in paragraph (b), or modification of the number of members from such regions, as determined under the rules established in paragraph (e), or both, as necessary to best reflect the geographic distribution of mushroom production volume in the United States and representation of imports, if applicable.

(e) Subject to the nine-member maximum limitation, the following procedure will be used to determine the number of members for each region to serve on the Council under paragraph (d):

(1) Each region that produces, on average, at least 35,000,000 pounds of mushrooms annually shall be entitled to one representative on the Council.

(2) As provided in paragraph (c), importers shall be represented by a single, separate region, which shall be entitled to one representative, if such region imports, on average, at least 35,000,000 pounds of mushrooms annually.

(3) Each region shall be entitled to representation by an additional Council member for each 50,000,000 pounds of annual production or imports, on average, in excess of the initial 35,000,000 pounds required to qualify the region for representation.

(4) Should, in the aggregate, regions be entitled to levels of representation under paragraphs (e) (1), (2) and (3) that would exceed the nine-member limit on the Council under the Act, the regions shall be entitled to representation on the Council as follows:

(i) Each region first shall be assigned one representative on the Council pursuant to paragraphs (e) (1) and (2).

(ii) Then, each region with 50,000,000 pounds of annual production or imports, on average, in excess of the initial 35,000,000 pounds required to qualify the region for representation shall be assigned one additional representative on the Council, except that if under such assignments all five regions, counting importers as a region, if applicable, would be entitled to additional representatives, that region with the smallest on-average volume, in terms of production or imports, will not be assigned an additional representative.

(iii) After members are assigned to regions under paragraphs (e)(4) (i) and (ii), if less than the entire nine seats on the Council have been assigned to regions, the remaining seats on the Council shall be assigned to each region for each 50,000,000 pound increment of annual production or import volume, on average, in excess of 85,000,000 pounds until all the seats are filled. It for any such 50,000,000 pound increment, more regions are eligible for seats than there are seats available, the seat or seats assigned for such increment shall be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

(f) In determining the volume of mushrooms produced in the United States or imported into the United States for purposes of this section, the Council and the Secretary shall:

(1) Only consider mushrooms produced or imported by producers and importers, respectively, as those terms are defined in §§1209.8 and 1209.15; and

(2) Use the information received by the Council under §1209.60, and data published by the Department.

(g) For purposes of the provisions of this section relating to the appointment of producers and importers to serve on the Council, the term *producer* or *importer* refers to any individual who is a producer or importer, respectively, or if the producer or importer is an entity other than an individual, an individual who is an officer or employee of such producer or importer.

§ 1209.31 Nominations.

All nominations for appointments to the Council under § 1209.33 shall be made as follows:

(a) As soon as practicable after this subpart becomes effective, nominations for appointment to the initial Council shall be obtained from producers by the Secretary. In any subsequent year in which an appointment to the Council is to be made, nominations for positions whose terms will expire at the end of that year shall be obtained from producers, and as appropriate, importers, and certified by the Council and submitted to the Secretary by August 1 of such year, or such other date as approved by the Secretary.

(b) Nominations shall be made at regional caucuses of producers or importers, or by mail ballot as provided in paragraph (e), in accordance with procedures prescribed in this section.

(c) Except for initial Council members, whose nomination process will be initiated by the Secretary, the Council shall issue a call for nominations by February 1 of each year in which nominations for an appointment to the Council is to be made. The call shall include, at a minimum, the following information:

(1) A list by region of the vacancies for which nominees may be submitted and qualifications as to producers and importers.

(2) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3) A list of those States, by region, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Council, and national and State producer or importer associations, if known, and of the regional caucuses, if any.

(d)(1) Except as provided in paragraph (e), nominations for each position shall be made by regional caucus in the region entitled to nominate for such position. Notice of such caucus shall be publicized to all producers or importers within the region, and to the Secretary, at least 30 days prior to the caucus. The notice shall have attached to it the call for nominations from the Council and the Department's equal opportunity policy. Except with respect to nominations for the initial appointments to the Council, the responsibility for convening and publicizing the regional caucus shall be that of the Council.

(2) All producers or importers within the region may participate in the caucus. However, if a producer is engaged in the production of mushrooms in more than one region or is also an importer, such person's participation within a region shall be limited to one vote and shall only reflect the volume of such person's production or imports within the applicable region.

(3) The regional caucus shall conduct the selection process for the nominees in accordance with procedures to be adopted at the caucus subject to the following requirements:

(i) There shall be two individuals nominated for each open position.

(ii) Each nominee shall meet the qualifications set forth in the call.

(iii) If a producer nominee is engaged in the production of mushrooms in more than one region or is also an importer, such individual shall participate within the region that such individual so elects in writing to the Council and such election shall remain controlling until revoked in writing to the Council.

(e) After the regional caucuses for the initial Council, the Council may conduct the selection of nominees by mail ballot in lieu of a regional caucus.

(f) When producers or importers are voting for nominees to the Council, whether through a regional caucus or a mail ballot, the following conditions shall apply:

(1) Voting for any open position shall be on the basis of:

(i) One vote per eligible voter; and

(ii) Volume of on-average production or imports of the eligible voter within that region.

(2) Whenever the producers or importers in a region are choosing nominees for one open position on the Council, the proposed nominee with the highest number of votes cast and the proposed nominee with the highest volume of production or importers voted shall be the nominees submitted to the Secretary. If a proposed nominee receives both the highest number of votes cast and the highest volume of production or imports voted, then the proposed nominee with the second highest number of votes cast shall be a nominee submitted to the Secretary along with such proposed nominee receiving both the highest number of votes cast and the highest volume of production or imports voted.

(3) Whenever the producers or importers in a region are choosing nominees for more than one open position on the Council at the same time, the number of the nominations submitted to the Secretary shall equal twice the number of such open positions, and for each open position shall consist of the proposed nominee with the highest number of votes cast and the proposed nominee with the highest volume of production or imports voted with respect to that position, subject to the rule set out in paragraph (f)(2). An individual shall only be nominated for one such open position.

(4) Voters shall certify on their ballots as to their on-average production or import volume within the region involved. Such certification may be subject to verification.

(g)(1) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members to the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary under the procedures set out in this section.

(2) Whenever producers or importers in a region cannot agree on nominees for an open position on the Council under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Council, the Secretary may appoint members in such manner as the Secretary, by regulation, determines appropriate.

§ 1209.32 Acceptance.

Each individual nominated for membership on the Council shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1209.33 Appointment.

From the nominations made pursuant to § 1209.31, the Secretary shall appoint the members of the Council on the basis of representation provided for in § 1209.30, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

§ 1209.34 Term of office.

(a) The members of the Council shall serve for terms of three years, except that the members appointed to the initial Council shall serve, proportionately, for terms of one, two, and three years.

(b) Members of the initial Council shall be designated for, and shall serve, terms as follows: One producer member each from regions 1, 2 and 3 shall be appointed for an initial term of one year; one producer member each from regions 1, 2, and 3 shall be appointed for an initial term of two years; and one producer member each from regions 2, 3, and 4 shall be appointed for an initial term of three years. Because current imports of fresh mushrooms are less than 35,000,000 pounds, the minimum established for representation on the Council, importers will not initially have a member appointed to the Council.

(c)(1) Except with respect to terms of office of the initial Council, the term of office for each member of the Council shall begin on January 1 or such other date that may be approved by the Secretary.

(2) The term of office for the initial Council shall begin immediately following appointment by the Secretary, except that time in the interim period from appointment until the following January 1, or such other date that is the generally applicable beginning date for terms under paragraph (c)(1) approved by the Secretary, shall not count toward the initial term of office.

(d) Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(e)(1) No member shall serve more than two successive three-year terms, except as provided in paragraph (e)(2)(ii).

(2)(i) Those members serving initial terms of two or three years may serve one successive three-year term.

(ii) Those members serving initial terms of one year may serve two successive three-year terms.

§ 1209.35 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Council, the Secretary may appoint a successor from the most recent nominations submitted for open positions on the Council assigned to the region that the vacant position represents, or the Secretary may obtain nominees to fill such vacancy in such manner as the Secretary, by regulation, deems appropriate. Each such successor appointment shall be for the remainder of the term vacated. A vacancy will not be required to be filled if the unexpired term is less than six months.

(b)(1) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Council, except as provided in paragraph (b)(2)(ii).

(2)(i) Any successor serving longer than one year may serve one successive three-year term.

(ii) Any successor serving one year or less may serve two successive three-year terms.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Council, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1209.36 Procedure.

(a) At a properly convened meeting of the Council, a majority of the members shall constitute a quorum.

(b) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Council, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph, or any other means of communication, but any such action shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(d) Meetings of the Council may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has an opportunity to be present either physically or by electronic connection.

(e) The organization of the Council and the procedures for conducting meetings of the Council shall be in accordance with its bylaws,which shall be established by the Council and approved by the Secretary.

§ 1209.37 Compensation and reimbursement.

The members of the Council shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a reasonable per diem allowance, as approved by the Council and the Secretary, incurred by such members in the performance of their responsibilities under this subpart.

§ 1209.38 Powers.

The Council shall have the following powers:

(a) To receive and evaluate or, on its own initiative, develop and budget for proposed programs, plans, or projects to promote the use of mushrooms, as well as proposed programs, plans, or projects for research, consumer information, or industry information, and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(d) To make rules and regulations to effectuate the terms and provisions of this subpart;

(e) To receive, investigate, and report to the Secretary for action complaints of violations of the provisions of this subpart;

(f) To disseminate information to producers, importers, first handlers, or industry organizations through programs or by direct contact using the public postal system or other systems;

(g) To select committees and subcommittees of Council members, including an executive committee whose powers and membership shall be determined by the Council, subject to the approval of the Secretary, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(h) To establish committees which may include individuals other than Council members, and pay the necessary and reasonable expenses and fees for the members of such committees;

(i) To recommend to the Secretary amendments to this subpart;

(j) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State mushroom producer organizations, or other organizations or entities, for the development and conduct of programs, plans, or projects authorized under § 1209.40 and with such producer organizations for other services necessary for the implementation of this subpart, and for the payment of the cost thereof with funds collected and received pursuant to this subpart. The Council shall not contract with any producer or importer for the purpose of mushroom promotion or research. The Council may lease physical facilities from a producer or importer for such promotion or research, if such an arrangement is determined to be cost effective by the Council and approved by the Secretary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) Any such program, plan, or project shall become effective upon approval of the Secretary;

(3) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Council of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Council may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor;

(k) With the approval of the Secretary, to invest, pending disbursement pursuant to a program, plan, or project, funds collected through assessments provided for in § 1209.51, and any other funds received by the Council in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(l) Such other powers as may be approved by the Secretary; and

(m) To develop and propose to the Secretary voluntary quality and grade standards for mushrooms, if the Council determines that such quality and

grade standards would benefit the promotion of mushrooms.

§ 1209.39 Duties.

The Council shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans, or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 2109.50.

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books, and records that clearly reflect all the acts and transactions of the Council. Minutes of each Council meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any producer or importer;

(k) To follow the Department's equal opportunity/civil rights policies; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the marketplace, maintain and expand existing markets and uses for mushrooms, develop new markets and uses for mushrooms, and to carry out programs, plans, and projects designed to provide maximum benefits to the mushroom industry.

PROMOTION, RESEARCH, CONSUMER INFORMATION, AND INDUSTRY INFORMATION

§ 1209.40 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to mushrooms; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of mushrooms and mushroom products, and the creation of new products thereof, to the end that marketing and use of mushrooms may be encouraged, expanded, improved or made more acceptable. However, as prescribed by the Act, nothing in this subpart may be construed to authorize mandatory requirements for quality control, grade standards, supply management programs, or other programs that would control production or otherwise limit the right of individual producers to produce mushrooms.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the

Council shall take appropriate steps to implement it.

(c) Each programs, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Council shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any mushrooms or mushroom product shall be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

EXPENSES AND ASSESSMENTS

§ 1209.50 Budget and expenses.

(a)(1) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(i) A statement of objectives and strategy for each program, plan, or project;

(ii) A summary of anticipated revenue, with comparative data for at least one preceding year;

(iii) A summary of proposed expenditures for each program, plan, or project; and

(iv) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

Each budget shall include a rate of assessment for such fiscal year calculated, subject to § 1209.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (f). The Council may change such rate at any time, as provided in § 1209.51(b)(5).

(2)(i) Subject to paragraph (a)(2)(ii), any amendment or addition to an approved budget must be approved by the Secretary, including shifting of funds from one program, plan, or project to another.

(ii) Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(b) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(c) The Council shall not use funds collected or received under this subpart to reimburse, defray, or make payment of expenditures incurred in developing, drafting, studying, lobbying on or promoting the legislation authorizing this subpart. Such prohibition includes reimbursement, defrayment, or payment to mushroom industry associations or organizations, producers or importers, lawyers, law firms, or consultants.

(d) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use. The donor may recommend that the whole or a portion of the contribution be applied to an ongoing program, plan, or project.

(e) The Council shall reimburse the Secretary, from funds received by the Council, for administrative costs incurred by the Secretary in implementing and administering this subpart, except for the salaries of Department employees incurred in conducting referenda.

(f) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in the reserve shall not exceed approximately

one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(g) With the approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§ 1209.51 Assessments.

(a) Any first handler initially purchasing, or otherwise placing into the current of commerce, mushrooms produced in the United States shall, in the manner as prescribed by the Council and approved by the Secretary, collect an assessment based upon the number of pounds of mushrooms marketed in the United States for the account of the producer, and remit the assessment to the Council.

(b) The rate of assessment effective during any fiscal year shall be the rate specified in the budget for such fiscal year approved by the Secretary, except that:

(1) The rate of assessment during the first year this subpart is in effect shall be one-quarter of one cent per pound of mushrooms marketed, or the equivalent thereof.

(2) The rate of assessment during the second year this subpart is in effect shall not exceed one-third of one cent per pound of mushrooms marketed, or the equivalent thereof.

(3) The rate of assessment during the third year this subpart is in effect shall not exceed one-half of one cent per pound of mushrooms marketed, or the equivalent thereof.

(4) The rate of assessment during each of the fourth and following years this subpart is in effect shall not exceed one cent per pound of mushrooms marketed, or the equivalent thereof.

(5) The Council may change the rate of assessment for a fiscal year at any time with the approval of the Secretary as necessary to reflect changed circumstances, except that any such changed rate may not exceed the level of assessment specified in paragraphs (b)(1), (2), (3), or (4), whichever is applicable.

(c) Any person marketing mushrooms of that person's own production to consumers in the United States, either directly or through retail or wholesale outlets, shall be considered a first handler and shall remit to the Council an assessment on such mushrooms at the rate per-pound then in effect, and in such form and manner prescribed by the Council.

(d) Only one assessment shall be paid on each unit of mushrooms marketed.

(e)(1) Each importer of mushrooms shall pay an assessment to the Council on mushrooms imported for marketing in the United States, through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(2) The per-pound assessment rate for imported mushrooms shall be the same as the rate provided for mushrooms produced in the United States.

(3) The import assessment shall be uniformly applied to imported mushrooms that are identified by the number, 0709.51.0000, in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh mushrooms.

(4) The assessments due on imported mushrooms shall be paid when the mushrooms are entered or withdrawn for consumption in the United States, or at such other time as may be established by rules and regulations prescribed by the Council and approved by the Secretary and under such procedures as are provided in such rules and regulations.

(5) Only one assessment shall be paid on each unit of mushrooms imported.

(f) The collection of assessments under this section shall commence on all mushrooms marketed in or imported into the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments until the Council is constituted, then remit such assessments to the Council.

(g)(1) Each person responsible for remitting assessments under paragraphs (a), (c), or (e) shall remit the amounts due from assessments to the Council on a monthly basis no later than the fifteenth day of the month following the

month in which the mushrooms were marketed, in such manner as prescribed by the Council.

(2)(i) A late payment charge shall be imposed on any person that fails to remit to the Council the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(ii) An additional charge shall be imposed on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(3) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Council by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (g)(2)(i) and (g)(2)(ii) of this section shall be applicable.

(h) The Council, with the approval of the Secretary, may enter into agreements authorizing other organizations to collect assessments in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the Council for collection purposes. Any reimbursement by the Council for such services shall be based on reasonable charges for services rendered.

(i) The Council is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Council shall not be obligated to pay interest on any advance payment.

§ 1209.52 Exemption from assessment.

(a) Persons that produce or import, on average, 500,000 pounds or less of mushrooms annually shall be exempted from assessment.

(b) To claim such exemption, such persons shall apply to the Council, in the form and manner prescribed in the rules and regulations.

(c) Mushrooms produced in the United States that are exported are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

(d) Domestic and imported mushrooms used for processing are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

§ 1209.53 Influencing governmental action.

No funds received by the Council under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart, and to submit to the Secretary proposed voluntary grade and quality standards for mushrooms.

REPORTS, BOOKS AND RECORDS

§ 1209.60 Reports.

(a) Each producer marketing mushrooms of that person's own production directly to consumers, and each first handler responsible for the collection of assessments under § 1209.51(a) shall be required to report monthly to the Council, on a form provided by the Council, such information as may be required under this subpart or any rules and regulations issued thereunder. Such information shall include, but not be limited to, the following:

(1) The first handler's name, address, and telephone number;

(2) Date of report, which is also the date of payment to the Council;

(3) Period covered by the report;

(4) The number of pounds of mushrooms purchased, initially transferred, or that in any other manner are subject to the collection of assessments, and a copy of a certificate of exemption, claiming exemption under § 1209.52 from those who claim such exemptions;

(5) The amount of assessments remitted; and

(6) The basis, if necessary, to show why the remittance is less than the

number of pounds of mushrooms determined under paragraph (a)(4) multiplied by the applicable assessment rate.

(b) If determined necessary by the Council and approved by the Secretary, each importer shall file with the Council periodic reports, on a form provided by the Council, containing at least the following information:

(1) The importer's name, address, and telephone number;

(2) The quantity of mushrooms entered or withdrawn for consumption in the United States during the period covered by the report; and

(3) The amount of assessments paid to the U.S. Customs Service at the time of such entry or withdrawal.

(c) The words *final report* shall be shown on the last report at the end of each fiscal year.

§ 1209.61 Books and records.

Each persons who is subject to this subpart shall maintain and make available for inspection by the Council or the Secretary such books and records as are deemed necessary by the Council, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1209.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the rules and regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of the Department, and all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Council members, producers, importers, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1209.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

§ 1209.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b)(1) Five years after the date on which this subpart becomes effective, the Secretary shall conduct a referendum among producers and importers to determine whether they favor continuation, termination, or suspension of this subpart.

(2) Effective beginning three years after the date on which this subpart becomes effective, the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to determine whether producers and importers favor termination or suspension of this subpart.

(3) Whenever the Secretary determines that suspension or termination of this subpart is favored by a majority of the mushroom producers and importers voting in a referendum under paragraphs (b) (1) or (2) who, during a representative period determined by the Secretary, have been engaged in producing and importing mushrooms and who, on average, annually produced and imported more than 50 percent of the volume of mushrooms produced and imported by all those producers and importers voting in the referendum, the Secretary shall:

(i) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(ii) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(4) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1209.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Council, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Council and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Council or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1209.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1209.74 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission

of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1209.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Council under this subpart shall be the property of the United States Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Council and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council. Upon termination of this subpart, § 1209.72 shall apply to determine disposition of all such property.

§ 1209.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1209.77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart B—Rules and Regulations

SOURCE: 58 FR 8197, Feb. 11, 1993, unless otherwise noted.

DEFINITIONS

§ 1209.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Mushroom Promotion, Research, and Consumer Information Order of this part.

NOMINATION PROCEDURES

§ 1209.231 Nominations.

Nominations shall be made at regional caucuses of producers or importers, or by mail ballot in accordance with the procedures prescribed in § 1209.31 of this part. Proxy voting by producers and importers shall not be permitted at a regional caucus or in a mail ballot. Each regional caucus and mail ballot shall be scheduled so as to ensure that the nominations for each position that will be open at the beginning of the following year are received by the Secretary by August 1, or such other date approved by the Secretary.

§ 1209.233 Regional caucus chairpersons.

(a) Regional caucus chairpersons shall be elected by a simple majority vote of eligible voters in attendance. Such elections shall be coordinated by the Council, except for the initial elections, which shall be coordinated by a representative of the Secretary.

(b) Regional caucus chairpersons will coordinate the entire nomination process. In conducting the nominations process, each regional caucus chairperson shall ensure that:

(1) Voting for producer nominees is limited to producers, and voting for importer nominees is limited to importers; and

(2) Producer candidates for nomination are producers, and importer candidates for nomination are importers.

(c) Within 14 days after completion of each regional caucus, each chairperson shall provide the Secretary with the following information:

(1) The identification of that region's two nominees for each open position on the Council; and

(2) A typed copy of the regional caucus's minutes.

(d) The chairperson of each regional caucus shall provide nominees with qualification statements and other specified information. Each nominee will be contacted by the chairperson and asked to forward such completed documentation to the Council within 14 days after completion of the regional caucus, except for the initial nominees, which shall be asked to forward such

completed documentation to the Secretary.

(e) The tenure of the chairperson shall only be for the duration of the regional caucus and the preparation of required documentation.

§ 1209.235 Mail balloting.

(a) After the initial regional caucuses, the Council may conduct nominations of individuals as candidates for appointment to the Council by mail ballot in lieu of a regional caucus.

(b)(1) In the event of a mail ballot, all qualified individuals in a region interested in serving as a member on the Council or persons who are interested in nominating an individual to serve on the Council shall submit to the Council in writing such information as name, mailing address, number of pounds of mushrooms produced or imported, or such other information as may be required, in order to place such individual on the ballot.

(2) Notice of mail balloting to nominate candidates for a position on the Council shall be publicized by the Council to producers or importers in the region involved, and to the Secretary, at least 120 days before the region's nominee ballot is issued.

(3) In proposing nominees for inclusion on a mail ballot, proposed nominations must be received by the Council at least 30 days before the region's nominee ballot is issued.

(c) Once proposed nominations have been submitted from the applicable region, the Council shall cause each proposed nomination, if the individual qualifies, to be placed on the region's nominee ballot. The Council then shall mail a ballot to each known producer or importer within the region.

(d) Distribution of ballots shall be announced by press releases, furnishing pertinent information on balloting, issued by the Council through newspapers and other publications having general circulation among producers in the mushroom producing areas involved or among mushroom importers.

(e) Each producer or importer shall cast a ballot for each open position on the Council assigned to the region in accordance with the procedures prescribed in § 1209.31 of this part. The completed ballot must be returned to the Council or its designee within 30 days after the ballot is issued.

(f) Within 45 days after a mail ballot is issued, the Council shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the region's two nominees for each open position on the Council.

(g) The Council shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Council and asked to forward such completed documentation to the Council within 14 days of such notification.

§ 1209.237 Appointment.

If an employee, partner, officer, or shareholder of a producer or importer is a current member of the Council, no nominee who is also an employee, partner, officer, or shareholder of such producer or importer shall be appointed to the Council. A Council member shall be disqualified from serving on the Council if such individual ceases to be affiliated with a producer or importer within the region the Council member represents.

GENERAL

§ 1209.239 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

ASSESSMENTS

§ 1209.251 Payment of assessments.

(a) Each first handler responsible for collecting assessments on domestic mushrooms shall collect the amounts assessed and remit such amounts to the Council on a monthly basis not later than the fifteenth day of the month following the month in which the mushrooms were marketed to or through the first handler.

(b) Each producer responsible for paying any assessment amount on the producer's own mushrooms shall remit such amount to the Council on a monthly basis not later than the fifteenth day of the month following the month in which the mushrooms were marketed by the producer.

(c) Each importer shall be responsible for remittance to the Council of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Any such assessment amount shall be remitted to the Council on a monthly basis not later than the fifteenth day of the month following the month of entry or withdrawal for consumption into the United States. Any person who imports mushrooms, as principal or as an agent, broker, or consignee for any person who produces mushrooms outside the United States for marketing in the United States shall be considered an importer.

(d) Remittance shall be by check, draft, or money order payable to the Mushroom Council, and shall be accompanied by a report, on a form provided by the Council.

(e) A late payment charge shall be imposed on any first handler or importer who fails to make timely remittance to the Council of the total assessment amount for which the person is liable. Such late payment charge shall be imposed on any assessments not received by the last day of the month following the month in which the mushrooms involved were marketed or, in the case of imports, not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 15 days after the end of the month such assessments are due.

(f) In addition to the late payment charge, interest shall be charged at a rate of one and one-half percent per month on the outstanding balance, including the late payment charge and any accrued interest, of any account that remains delinquent beyond the last day of the second month following the month the mushrooms involved were marketed. However, first handlers paying their assessments, in accordance with paragraph (h)(2) of this section, will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (h)(2) of this section. In the case of imports, such a rate of interest will be charged to any account that remains delinquent on any assessments not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Such a rate of interest will continue to be charged monthly until the outstanding balance is paid to the Council.

(g) Any assessment determined by the Council at a date later than prescribed by this section, because of a person's failure to submit a report to the Council when due, shall be considered to have been payable by the date it would have been due if the report had been filed on time. A late payment charge and monthly interest charges on the outstanding balance shall be applicable to such unpaid assessment in accordance with paragraphs (e) and (f) of this section.

(h) In lieu of the monthly assessment payment and reporting requirements of § 1209.260 of this subpart and § 1209.60 of this part, the Council may permit a first handler to make advance payment of the total estimated assessment amount due to the Council for the ensuing fiscal year, or portion thereof, prior to the actual determination of assessable mushrooms.

(1) Each person shall provide an initial report estimating assessable mushrooms. The Council may request additional information on such estimate.

(2) Each person shall provide a final report of actual marketings during the period involved and remit any unpaid assessments not later than the fifteenth day of the month following the end of the period covered.

(3) Any person whose prepayment exceeds the amount paid shall be reimbursed for the amount of overpayment. The Council shall not, in any case, be obligated to pay interest on any advance payment.

§ 1209.252 Exemption procedures.

(a) Any person who produces or imports, on average, 500,000 pounds or less of mushrooms annually and who desires to claim an exemption from assessments during a fiscal year as provided in § 1209.52 of this part shall apply to the Council, on a form provided by the Council, for a certificate of exemption. Such persons shall certify that their production or importation of mushrooms shall not exceed 500,000 pounds, on average, for the fiscal year for which the exemption is claimed. Pursuant to this section, the term *on average* shall be calculated by averaging a person's estimated production or importation for the fiscal year for which an exemption is claimed with such person's production or importation in the preceding fiscal year.

(b) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one. Each person who is exempt from assessment must provide an exemption number to the first handler in order not to be subject to collection of an assessment on mushrooms. First handlers and importers, except as otherwise authorized by the Council, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council. Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Council for reimbursement of such assessments paid.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(d) The Council may require persons receiving an exemption from assessments to provide to the Council reports on the disposition of exempt mushrooms.

REPORTS

§ 1209.260 Reports.

Each first handler shall be required to report monthly to the Council such information as may be required under § 1209.60(a) of this part. In addition, each first handler shall be required to provide the tax identification number or social security number of each producer the first handler has dealt with during the time period covered by the report.

[58 FR 8197, Feb. 11, 1993, as amended at 60 FR 13614, Mar. 14, 1995]

MISCELLANEOUS

§ 1209.280 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* is OMB control number 0581–0093, except for the Council nominee background statement form which is assigned OMB control number 0505–0001.

Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order

SOURCE: 62 FR 66975, Dec. 23, 1997, unless otherwise noted.

§ 1209.300 General.

A referendum to determine whether eligible producers and importers favor continuation of the Mushroom Promotion, Research, and Consumer Information Order shall be conducted in accordance with these procedures.

§ 1209.301 Definitions.

Unless otherwise defined below, the definition of terms used in these procedures shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Mushroom Promotion, Research, and Consumer Information Order, including an amendment to the Order.

(c) *Referendum agent* or agent means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, mushroom production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called ''joint ventures'', wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of fresh mushrooms and the authority to transfer title to the mushrooms so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who produces, on average, over 500,000 pounds annually of fresh mushrooms during the representative period and who:

(1) Owns or shares in the ownership of mushroom production facilities and equipment resulting in the ownership of the mushrooms produced;

(2) Rents mushroom production facilities and equipment resulting in the ownership of all or a portion of the mushrooms produced;

(3) Owns mushroom production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the mushrooms produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms who share the risk of loss and receive a share of the mushrooms produced. No other acquisition of legal title to mushrooms shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imports, on average, over 500,000 pounds annually of fresh mushrooms during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced mushrooms immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mushrooms from the U.S. Customs Service when such mushrooms are entered or withdrawn for consumption in the United States.

§ 1209.302 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of

such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Ballots are to be cast by mail or fax.

§ 1209.303 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The total volume of mushrooms produced by the voting producer during the representative period; and

(3) The total volume of mushrooms imported by the voting importer during the representative period.

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) Collect and safeguard ballots received by fax.

(f) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results.

(g) Prepare a report on the referendum.

(h) Prepare an announcement of the results for the public.

§ 1209.304 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1209.305 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1209.306 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1209.307 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any person covered under the Act shall be held confidential and shall not be disclosed.

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

Subpart—Watermelon Research and Promotion Plan

DEFINITIONS

1210.301 Secretary.
1210.302 Act.
1210.303 Plan.
1210.304 Board.
1210.305 Watermelon.
1210.306 Producer.
1210.307 Handle.
1210.308 Handler.
1210.309 Person.
1210.310 Fiscal period and marketing year.
1210.311 Programs and projects.
1210.312 Promotion.
1210.313 Research.
1210.314 Importer.
1210.315 United States.

NATIONAL WATERMELON PROMOTION BOARD

1210.320 Establishment and membership.
1210.321 Nominations and selection.
1210.322 Term of office.
1210.323 Acceptance.
1210.324 Vacancies.
1210.325 Procedure.
1210.326 Compensation and reimbursement.
1210.327 Powers.
1210.328 Duties.

RESEARCH AND PROMOTION

1210.330 Policy and objective.
1210.331 Programs and projects.

EXPENSES AND ASSESSMENTS

1210.340 Budget and expenses.
1210.341 Assessments.
1210.342 Exemption from assessment.
1210.343 [Reserved]
1210.344 Operating reserve.

REPORTS, BOOKS, AND RECORDS

1210.350 Reports.
1210.351 Books and records.
1210.352 Confidential treatment.

MISCELLANEOUS

1210.360 Right of the Secretary.
1210.361 Personal liability.
1210.362 Influencing government action.
1210.363 Suspension or termination.
1210.364 Proceedings after termination.
1210.365 Effect of termination or amendment.
1210.366 Separability.
1210.367 Patents, copyrights, inventions, and publications.

Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board

PRODUCER AND HANDLER MEMBERS

1210.400 Terms defined.
1210.401 District conventions.
1210.402 Voter and board member nominee eligibility.
1210.403 Voting procedures.

IMPORTER MEMBERS

1210.404 Importer member nomination and selection.

PUBLIC MEMBER

1210.405 Public member nominations and selection.

Subpart—Rules and Regulations

DEFINITIONS

1210.500 Terms defined.

GENERAL

1210.501 Realignment of districts.
1210.502 [Reserved]
1210.504 Contracts.
1210.505 Department of Agriculture costs.

ASSESSMENTS

1210.515 Levy of assessments.
1210.516 [Reserved]
1210.517 Determination of handler.
1210.518 Payment of assessments.
1210.519 Failure to report and remit.
1210.520 Refunds.
1210.521 Reports of disposition of exempted watermelons.

RECORDS

1210.530 Retention period for records.
1210.531 Availability of records.
1210.532 Confidential books, records, and reports.

MISCELLANEOUS

1210.540 OMB assigned numbers.

AUTHORITY: 7 U.S.C. 4901–4916.

SOURCE: 53 FR 51091, Dec. 20, 1988, unless otherwise noted.

Subpart—Watermelon Research and Promotion Plan

SOURCE: 54 FR 24545, June 8, 1989, unless otherwise noted.

DEFINITIONS

§ 1210.301 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1210.302 Act.

Act means the Watermelon Research and Promotion Act of 1985 (Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986, 99 Stat. 1622), as amended.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10797, Feb. 28, 1995]

§ 1210.303 Plan.

Plan means this watermelon research and promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

Board means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

Watermelon means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus, popularly referred to as watermelon grown by producers in the United States or imported into the United States.

[60 FR 10797, Feb. 28, 1995]

§ 1210.306 Producer.

Producer means any person engaged in the growing of 10 acres or more of watermelons including any person who owns or shares the ownership and risk of loss of such watermelon crop.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10797, Feb. 28, 1995]

§ 1210.307 Handle.

Handle means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of field run watermelons by the producer thereof to a handler for grading, sizing or processing.

§ 1210.308 Handler.

Handler means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. For the purposes of this subpart, the term ''handler'' means the ''first'' person who performs the handling functions.

§ 1210.309 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1210.310 Fiscal period and marketing year.

Fiscal period and *marketing year* mean the 12 month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.311 Programs and projects.

Programs and *projects* mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1210.331.

§ 1210.312 Promotion.

Promotion means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.313 Research.

Research means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons.

§ 1210.314 Importer.

Importer means any person who imports watermelons into the United States as a principal or as an agent, broker, or consignee for any person who produces watermelons outside of

the United States for sale in the United States.

[60 FR 10797, Feb. 28, 1995]

§ 1210.315 United States.

United States means each of the several States and the District of Columbia.

[60 FR 10797, Feb. 28, 1995]

NATIONAL WATERMELON PROMOTION BOARD

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the ''Board.'' The Board shall be composed of producers, handlers, importers, and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The Board shall also include one or more representatives of importers, who shall be nominated in such manner as may be prescribed by the Secretary. The public representative shall be nominated by the Board members in such manner as may be prescribed by the Secretary. If producers, handlers, and importers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for each of seven districts in the contiguous States of the United States. Such districts as hereby established have approximately equal production volume according to the three-year average production as set forth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State Highway 50.

District #2—North Florida including all areas north of State Highway 50.

District #3—The States of Alabama and Georgia.

District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.

District #6—The State of Texas.

District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years USDA production reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of watermelon produced, and

(3) Other relevant factors.

As a result of this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

(d) Importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board.

(e) Not later than 5 years after the date that importers are subject to the Plan, and every 5 years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(f) The Board consists of 14 producers, 14 handlers, at least one importer, and one public member appointed by the Secretary.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10797, Feb. 28, 1995]

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) There shall be two individuals nominated for each vacant position.

(b) The Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district and to importers nationally for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States, by district, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, importers, and district conventions, if any.

(c) Nominations for producer and handler positions that will become vacant shall be made by district convention in the district entitled to nominate. Notice of such convention shall be publicized to all producers and handlers within such district, and the Secretary at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. The responsibility for convening and publicizing the district convention shall be that of the then members of the Board from that district.

(d) Nominations for importers positions that become vacant may be made by mail ballot, nomination conventions, or by other means prescribed by the Secretary. The Board shall provide notice of such vacancies and the nomination process to all importers through press releases and any other available means as well as direct mailing to known importers. All importers may participate in the nomination process: *Provided*, That a person who both imports and handles watermelons may vote for importer members and serve as an importer member if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(e) All producers and handlers within the district may participate in the convention: *Provided*, That a person that produces and handles watermelons may vote for handler members only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) The district convention chairperson shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to requirements set in § 1210.321(e).

(1) No State in Districts 3, 4, 5, and 7 as currently constituted shall have more than three producers and handlers representatives concurrently on the Board.

(2) Each State represented at the district convention shall have one vote for each producer position and one vote for each handler position from the District on the Board, which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each five hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports; *Provided*, That for the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980,

and 1981 will be controlling as to any additional production volume votes.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years.

(b) Except in the case of mid-term vacancies, the term of office shall begin on January 1, or such other date as may be recommended by the Board and approved by the Secretary.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No person shall serve more than two successive terms of office.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995; 60 FR 13515, Mar. 13, 1995]

§ 1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continual services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

(a) A simple majority of Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication; *Provided*, That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.326 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as Board members.

§ 1210.327 Powers.

The Board shall have the following powers subject to § 1210.363:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this Plan;

(c) To require its employees to receive, investigate, and report to the

Secretary complaints of violations of this Plan; and

(d) To recommend to the Secretary amendments to this Plan.

§ 1210.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish working committees of persons other than Board members.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds received pursuant to this Plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds received pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers, handlers, and importers;

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare, make public, and make available to producers, handlers, and importers reports of its activities carried out.

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(k) To act as intermediary between the Secretary and any producer, handler, or importer;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify watermelon producers, handlers, and importers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers, importers, and the public to assist in the development of research and promotion programs for watermelons; and

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

RESEARCH AND PROMOTION

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen watermelons' competitive position in the marketplace,

(b) Maintain and expand existing domestic and foreign markets, and

(c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and other sales promotion of watermelons designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelon;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelons or their consumption and use may be encouraged or expanded, or to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelons shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

EXPENSES AND ASSESSMENTS

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of watermelons, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments received pursuant to § 1210.341.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and first handled in the United States and all watermelons imported into the United States for consumption as human food. No more than one assessment on a producer, handler, or importer shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions on any same lot of watermelons, both assessments shall be paid by such person. In the case of an importer, the assessment shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer at the

time of entry of the watermelons into the United States.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. No assessments shall be levied on watermelons grown by producers of less than 10 acres of watermelons.

(c) Each handler, as defined, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer on whose watermelons the assessments are made. The handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. In addition, the handler shall indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Each importer shall be responsible for payment of the assessment to the Board on watermelons imported into the United States through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(e) Producer-handlers and handlers shall pay assessments to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued under this part. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

(f) There shall be a late payment charge imposed on any handler or importer who fails to remit to the Board the total amount for which any such handler or importer is liable on or before the payment due date established by the Board under paragraph (e) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(g) There shall also be imposed on any handler or importer subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler or importer is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary.

(h) The Board is hereby authorized to accept advance payment of assessments by handlers and importers that shall be credited toward any amount for which the handlers and importers may become liable. The Board shall not be obligated to pay interest on any advance payment.

(i) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

(j) The Board may authorize other organizations to collect assessments in its behalf with the approval of the Secretary. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.342 Exemption from assessment.

(a) The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

(b) Importers of less than 150,000 pounds of watermelons per year shall be entitled to apply for a refund that is equal to the rate of assessment paid by domestic producers.

(c) The Secretary may adjust the quantity of the weight exemption specified in paragraph (b) of this section on the recommendation of the Board after an opportunity for public notice and comment to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.

(d) The Board shall have the authority to establish rules, with the approval of the Secretary, for certifying

whether a person meets the definition of a producer under section 1210.306.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.343 [Reserved]

§ 1210.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established; *Provided,* That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1210.350 Reports.

(a) Each handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information as may be necessary in order for the Board to perform its duties. Such reports may include, but shall not be limited to, the following information:

(1) Total quantity of watermelons handled for each producer and by the handler, including those which are exempt under this Plan;

(2) Total quantity of watermelons handled for each producer and by the handler, on which the producer assessment was collected;

(3) Name and address of each person from whom an assessment was collected, the amount collected from each person, and the date such collection was made; and

(4) Name and address of each person claiming exemption from assessment and a copy of each such person's claim of exemption.

(b) Each importer of watermelons shall maintain a separate record that includes a record of:

(1) The total quantity of watermelons imported into the United States that are included under the terms of this Plan;

(2) The total quantity of watermelons that are exempt from the Plan; and

(3) Such other information as may be prescribed by the Board.

(c) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.351 Books and records.

Each handler and importer subject to this Plan shall maintain, and during normal business hours make available for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for 2 years beyond the fiscal period of their applicability.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based on the reports of a number of handlers or importers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person.

(b) Any disclosure of confidential information by any employee of the

Board, except as required by law, shall be considered willful misconduct.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

MISCELLANEOUS

§ 1210.360 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1210.361 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1210.362 Influencing government action.

No funds received by the Board under this Plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided in this subpart.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.363 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers, handlers, and importers to determine if watermelon producers, handlers, and importers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers, handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons and who produced, handled, or imported more than 50 percent of the combined total of the volume of watermelons produced, handled, or imported by those producers, handlers, and importers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. *Provided*, That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. Any such referendum shall be conducted by mail ballot.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.364 Proceedings after termination.

(a) Upon the termination of this Plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1210.328(d);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers, handlers and importers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers, handlers and importers such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.365 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder; or

(b) Release or extinguish any violation of this Plan or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1210.366 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1210.367 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1210.364 shall apply to determine the disposition of all such property.

Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board

SOURCE: 54 FR 38205, Sept. 15, 1989, unless otherwise noted.

PRODUCER AND HANDLER MEMBERS

§ 1210.400 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Watermelon Research and Promotion Plan.

§ 1210.401 District conventions.

(a) Except for the initial district convention in each district, which will be called and opened by a representative of the Secretary, the Board shall call and open all district conventions.

(b) District conventions are to be held to nominate producers and handlers as candidates for membership on the National Watermelon Promotion Board. Each district, as defined in § 1210.501, is entitled to two producer and two handler members on the Board.

(c) There shall be two individuals nominated for each vacant position. In multi-State districts, no one State shall have nominees for more than

three of the four district positions on the Board.

(d) All producers and handlers within each district may participate in that district's convention: *Provided*, That they meet the eligibility provisions set forth in § 1210.402 of this subpart.

(e) The convention chairperson shall be elected as provided in § 1210.403(b) of this subpart.

(f) The Board member nomination process shall be conducted by the chairperson in conformance with the provisions of § 1210.321 of the Plan and § 1210.403 of this subpart. At the conclusion of the district convention for the initial term of office, the chairperson will provide the Secretary with:

(1) The identification of that district's two nominees for each producer and handler position on the Board, and

(2) A typed copy of the district convention's minutes.

This information must be provided by the chairperson to the Board staff in a manner that will ensure receipt, at the address specified in the call for the district convention, within 14 calendar days of the district convention's completion, but not later than July 8 for appointments to become effective on the following January 1. The Board staff must forward such information to the Secretary, in a manner that will ensure receipt, within 21 calendar days of completion of the district convention, but not later than July 15 for appointments to become effective on the following January 1. Further, the chairperson will immediately arrange for completion of qualification statements and other specified information by each nominee, and each nominee shall qualify by forwarding such information to the Board's office within 14 calendar days of completion of the district convention, but not later than July 8 for appointments to become effective on the following January 1. The Board staff must forward the completed qualification statements and other specified information to the Secretary, in a manner that will ensure receipt within 21 calendar days of completion of the district convention, but not later than July 15 for appointments to become effective on the following January 1.

[54 FR 38205, Sept. 15, 1989, as amended at 58 FR 3355, Jan. 8, 1993; 59 FR 18948, Apr. 21, 1994; 60 FR 10799, Feb. 28, 1995]

§ 1210.402 Voter and board member nominee eligibility.

(a) All producers and handlers within a district may participate in their district convention for the purpose of nominating candidates for appointment to the Board: *Provided*, That a producer who both produces and handles watermelons may vote for handler member nominees and serve as a handler member nominee only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production or the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *Provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board. For the purpose of participation in initial nominating conventions, such election shall be made in writing, at the address provided, to the Department official identified in the call for a district convention.

(b) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in § 1210.403 and § 1210.404 of this subpart.

(c) All producers and handlers attending their district conventions may be candidates for one or more of the positions of State spokesperson, district

convention chairperson, and producer or handler nominee.

[54 FR 38205, Sept. 15, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.403 Voting procedures.

(a) Proxy voting by producers and handlers for producer and handler nominees shall be permitted at all district conventions: *Provided,* That producers may cast proxy votes for producers only, and handlers may cast proxy votes for handlers only. In non-multi-State districts, proxy voting shall be permitted for all producer and handler nominee balloting to determine the districts' nominees. In multi-State districts, proxy voting shall be permitted for all producers and handlers participating in a State's balloting to determine the State's nominees. No other proxy voting, such as for district convention chairperson, shall be allowed. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(1) The proxy voter's name, address, and telephone number;

(2) Signature and date signed;

(3) A certification identifying the proxy voter as a producer or a handler; and

(4) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

All proxy documentation must be received by the Board at its headquarters address at least two weeks before the district convention is scheduled to convene. For the purpose of the initial district convention, all proxy documentation must be forwarded to the Department representative identified in the call for the district convention in a manner that will ensure receipt, at the address specified in the call, at least 72 hours before the district convention is scheduled to convene. The Board, or in the case of the initial conventions the Department representative identified in the call or other representative of the Department, may challenge any proxy vote and disqualify any challenged vote for cause. In the case of duplicate proxy authorizations by any person, only the first authorization, determined by date will be allowed. In the case of duplicate dates, the proxy which is received first will be allowed.

(b) In non-multi-State districts, convention chairpersons shall be elected by a majority vote of the eligible voters in attendance. In multi-State districts, the election shall be by majority vote of all States present with each State's vote(s) determined by a majority vote of the eligible voters of that State in attendance. Each such State is entitled to one vote, plus one additional vote for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop production summary reports of the Department or, if such reports are not published, then the three-year average of the Board's assessment reports: *Provided,* That for the first two conventions, the Department's Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

(c) In multi-State districts 3, 4, 5 and 7, the convention chairperson will direct the eligible producer voters and handler voters from each State to caucus separately for the purpose of electing a State spokesperson for each group. Election of each State spokesperson shall be by simple majority of all individual voters in attendance. In lieu of written ballots, a State spokesperson may be elected by voice vote or a show of hands. The role of the State spokesperson is to coordinate State voting and to cast all State votes.

(d) Convention chairpersons will coordinate the entire producer and handler nomination process. In conducting the nomination process, each convention chairperson will ensure that:

(1) Voting for producer nominees is limited to producers, and voting for handler nominees is limited to handlers; and

(2) Producer candidates for nomination are producers, and handler candidates for nomination are handlers.

(e) Voting, for producer and handler nominees, in non-multi-State districts shall be on the basis of one vote per person, except that persons authorized to cast proxy votes shall be allowed to cast all proxy votes not disallowed by the Board or the Department. Election

of nominees shall be on the basis of a simple majority of all eligible votes cast.

(f) Voting for producer and handler nominees in multi-State districts shall be on a State by State basis. Producers and handlers from each State shall caucus separately, at the district convention, for the purpose of determining which nominees shall receive their State's vote(s) for membership on the Board. Each State's vote(s) shall be based on a simple majority of all votes (including proxy votes) cast by producers or handlers voting in their State's caucus. Each State represented at a multi-State district convention shall have one vote for each producer position and one vote for each handler position from the district on the Board. Each State shall further have an additional vote toward each position for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop production summary reports of the Department or, if such reports are not published, then the three-year average of the Board's assessment reports: *Provided*, That for the first two calls for nominees, the Department's Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes. Each State spokesperson will cast the State's vote(s) for each nominee position. Election of nominees shall be on the basis of a simple majority of all State votes cast.

(g) During the voting for convention chairperson, State spokesperson, and Board member nominee, should no candidate receive the required simple majority on the first ballot, the number of candidates may be reduced by dropping one or more of the lowest vote recipients from the list of candidates. The balloting will be repeated until the position is filled.

(h) Two nominees shall be elected for each of the producer and handler positions from each district on the Board. The two nominees for each position shall be elected simultaneously. The convention chairperson will open the floor to the nomination of candidates for possible election as a Board member nominee for each available position. Each position will be dealt with separately (i.e., candidates for one position will be nominated and then elected before the convention moves on to the next available position). Each eligible voter may vote for two of the nominees on one ballot. The two nominees receiving the greatest number of votes and at least a simple majority of the votes cast will be elected as the district's Board member nominees for the position. No individual elected as a nominee for Board membership may be a candidate on subsequent Board member nominee ballots (i.e., two different producer names and two different handler names must be submitted as nominees for each producer and handler position from each district to the Secretary of Agriculture). There shall be no designation of first and second choice nominees.

[54 FR 38205, Sept. 15, 1989, as amended at 58 FR 3355, Jan. 8, 1993]

IMPORTER MEMBERS

§ 1210.404 Importer member nomination and selection.

(a) The Board shall include one or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by watermelon importers. Importers' representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board if importers are subject to the Plan. Nominations for importer positions that become vacant shall be made by importers at nomination conventions or by mail ballot.

(b) The initial nomination of importer members shall be made not later than 90 days after the Plan is amended.

(c) There shall be two individuals nominated for each vacant position. The importer receiving the highest number of votes for a vacancy shall be the first choice nominee, and the importer receiving the second highest number of votes shall be the second choice nominee submitted to the Secretary.

(d) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production,

first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

(e) *Nomination Conventions.* If nominations are made by nomination conventions, the Board shall widely publicize such conventions and provide importers and the Secretary at least 10 days notice prior to each convention.

(1) Proxy voting by importers shall be permitted at all conventions. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(i) The proxy voter's name, address, and telephone number;

(ii) Signature and date signed;

(iii) A certification identifying the proxy voter as an importer; and

(iv) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

(2) The Board shall provide to the Secretary a typed copy of each convention's minutes and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of completion of a convention.

(f) *Mail balloting.* If nominations are conducted by mail ballot, the Board shall request importers to submit nominations of eligible importers. It is the importer's responsibility to prove the individual's eligibility. After the names of nominees are received, the Board shall print ballots and ask eligible importers to vote to nominate their candidates. After the vote is received, the Board shall tabulate the results and shall send to the Department the nominees in order of preference. The Board shall provide the Secretary with a report on the results, number of importers participating in the vote, and the volume of imports, and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of receiving the ballots.

(g) Any individual who both imports and handles watermelons will be considered an importer if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

[60 FR 10800, Feb. 28, 1995]

PUBLIC MEMBER

§ 1210.405 Public member nominations and selection.

(a) The public member shall be nominated by the other members of the Board. The public member shall have no direct financial interest in the commercial production or marketing of watermelons except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for the public member position. Voting for public member nominees shall require a quorum of the Board and shall be on the basis of one vote per Board member. Election of nominees shall be on the basis of a simple majority of those present and voting. Such election shall be held prior to August 1, 1990, and every third August first thereafter. The Board may prescribe such additional qualifications, administrative rules and procedures for selection and voting for public member nominees as it deems necessary and the Secretary approves.

(b) Each person nominated for the position of public member on the Board shall qualify by filing a written acceptance with the Secretary within 14 calendar days of completion of the Board meeting at which public member nominees were selected.

[55 FR 13256, Apr. 10, 1990. Redesignated and amended at 60 FR 10800, Feb. 28, 1995]

Subpart—Rules and Regulations

SOURCE: 55 FR 13256, Apr. 10, 1990, unless otherwise noted.

DEFINITIONS

§ 1210.500 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which

appear in subpart—Watermelon Research and Promotion Plan.

GENERAL

§ 1210.501 Realignment of districts.

Pursuant to § 1210.320(c) of the Plan, the districts shall be as follows:

District 1—South Florida, including all areas south of State Highway 50.

District 2—North Florida, including all areas north of State Highway 50.

District 3—The States of Alabama, Georgia, and Mississippi.

District 4—The States of Connecticut, Delaware, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

District 5—The States of California—north of San Luis Obispo, Kern, and San Bernardino counties, Colorado, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

District 6—The States of Arkansas, Louisiana, and Texas.

District 7—The State of Arizona, the remainder of the State of California, including San Luis Obispo, Kern, and San Bernardino counties, and the State of New Mexico.

[59 FR 18948, Apr. 21, 1994]

§1210.502 [Reserved]

§ 1210.504 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of programs or projects authorized by the Plan and for carrying out such programs or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a Board contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

§ 1210.505 Department of Agriculture costs.

Pursuant to § 1210.340, the Board shall reimburse the Department of Agriculture for referendum and administrative costs incurred by the Department with respect to the Plan. The Board shall pay those costs incurred by the Department for the conduct of Department duties under the Plan as determined periodically by the Secretary. The Department will bill the Board monthly and payment shall be due promptly after the billing of such costs. Funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10800 Feb. 28, 1995]

ASSESSMENTS

§ 1210.515 Levy of assessments.

(a) An assessment of two cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of two cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of four cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.10.30007 and 0807.10.40005 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service (USCS) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between USCS and USDA. Any importer or agent who is exempt from payment of assessments may submit the Board adequate proof of the volume handled by such importer for the exemption to be granted.

(c) Watermelons used for non-human food purposes are exempt from assessment requirements but are subject to the safeguard provisions of § 1210.521.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10800, Feb. 28, 1995]

§ 1210.516 [Reserved]

§ 1210.517 Determination of handler.

The producer and handler assessments on each lot of watermelons handled shall be paid by the handler. Unless otherwise provided in this section, the handler responsible for payment of assessments shall be the first handler of such watermelons. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the watermelons in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) Producer grades, packs, and sells watermelons of own production to a handler. In this instance, it is the handler, not the producer, who places the watermelons in the current of commerce. The handler is responsible for payment of the assessments.

(2) Producer packs and sells watermelons of that producer's own production from the field, roadside stand, or storage to a consumer, trucker, retail or wholesales outlet, or other buyer who is not a handler of watermelons. The producer places the watermelons in the current of commerce and is the first handler.

(3) Producer purchases watermelons from another producer. The producer purchasing the watermelons is the first handler.

(4) Producer delivers field-run watermelons of own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such watermelons for the account of the handler or for the account of the producer.

(5) Producer delivers field-run watermelons of own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such watermelons to a handler.

(6) Producer delivers watermelons of own production to a handler who takes title to such watermelons. The handler who purchases such watermelons from the producer is the first handler.

(7) Producer supplies watermelons to a cooperative marketing association which sells or markets the watermelons and makes an accounting to the producer, or pays the proceeds of the sale to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery to such cooperative.

(8) Handler purchases watermelons from a producer's field for the purpose of preparing such watermelons for market or for transporting such watermelons to storage for subsequent handling. The handler who purchases such watermelons from the producer is the first handler.

(9) Broker/Commission House receives watermelons from a producer and sells such watermelons in the Broker's/Commission House's name. In this instance, the Broker/Commission House is the first handler, regardless of whether the Broker/ Commission House took title to such watermelons.

(10) Broker/Commission House, without taking title or possession of watermelons, sells such watermelons in the name of the producer. In this instance, the producer is the first handler.

(11) Processor utilizes watermelons of own production in the manufacture of rind pickles, frozen, dehydrated, extracted, or canned products for human consumption. In so handling watermelons the processor is the first handler.

(12) Processor purchases watermelons from the producer thereof. In this instance, the processor is the first handler even though the producer may have graded, packed, or otherwise handled such watermelons.

(b) In the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be

considered the handler of the watermelons for the purpose of this subpart.

[55 FR 13256, Apr. 10, 1990, as amended at 58 FR 3356, Jan. 8, 1993]

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced watermelons shall become due at the time the first handler handles the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States.

(b) *Responsibility for payment.* (1) The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the first handler handles the watermelons.

(2) The U.S. Customs Service shall collect assessments on imported watermelons from importers and forward such assessments under an agreement between the U.S. Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessments directly to the Board of any assessments due but not collected by the U.S. Customs Service at the time of entry, or withdrawal, on watermelons imported into the United States for human consumption.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (b) and (e) of this section, each handler and importer shall remit the required producer and handler assessments, pursuant to § 1210.341 of the Plan, directly to the Board not later than 30 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board, or NWPB, and shall be accompanied by a report, preferably on Board forms, pursuant to § 1210.350. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 30 days after the end of the month such assessments are due.

(2) Pursuant to § 1210.350 of the Plan, each handler shall file with the Board a report for each month that assessable watermelons were handled. All handler reports shall contain at least the following information:

(i) The handler's name, address, and telephone number;

(ii) Date of report (which is also the date of payment to the Board);

(iii) Period covered by the report;

(iv) Total quantity of watermelons handled during the reporting period;

(v) Date of last report remitting assessments to the Board; and

(vi) Listing of all persons for whom the handler handled watermelons, their addresses, hundredweight handled, and total assessments remitted for each producer. In lieu of such a list, the handler may substitute copies of settlement sheets given to each person or computer generated reports, provided such settlement sheets or computer reports contain all the information listed above.

(vii) Name, address, and hundredweight handled for each person claiming exemption for assessment.

(viii) If the handler handled watermelons for persons engaged in the growing of less than 10 acres of watermelons, the report shall indicate the name and address of such person and the quantity of watermelons handled for such person.

(3) The words ''final report'' shall be shown on the last report at the close of the handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(4) *Prepayment of assessments.* (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit handlers to make an advance payment of their total estimated assessments for the crop year to the Board prior to their actual determination of assessable watermelons. The Board shall not be obligated to pay interest on any advance payment.

(ii) Handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments not later than 30 days after the end of the last month of the designated handler's marketing season

or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(iii) Handlers using such procedures shall, after filing a final annual report, receive a reimbursement of any overpayment of assessments.

(iv) Handlers using such procedures shall, at the request of the Board to verify a producer's refund claim, provide the Board with a handling report on any and all producers for whom the handler has provided handling services but has not yet filed a handling report with the Board.

(v) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board on request.

(d) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any handler and importer who fails to make timely remittance to the Board of the total producer and handler and importer assessments for which any such handler and importer is liable. Such late payment shall be imposed on any assessments not received before the fortieth day after the end of the month such assessments are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 30 days after the end of the month such assessments are due.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts for which payment has not been received by the last day of the second month following the month of handling; *Provided*, that, handlers paying their assessments in accordance with paragraph (c)(4)(ii), will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (c)(4)(ii). Such interest will continue monthly until the outstanding balance is paid to the Board.

(e) *Payment through cooperating agency.* The Board may enter into agreements, subject to approval of the Secretary, authorizing other organizations, such as a regional watermelon association or State watermelon board, to collect assessments in its behalf. In any State or area in which the Board has entered into such an agreement, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers or producers. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided by the cooperating agency, it may acquire such evidence from individual handlers. All such agreements are subject to the requirements of the Act, Plan, and all applicable rules and regulations under the Act and the Plan.

[55 FR 13256, Apr. 10, 1990; 55 FR 20443, May 17, 1990, as amended at 56 FR 15808, Apr. 18, 1991; 60 FR 10801, Feb. 28, 1995]

§ 1210.519 Failure to report and remit.

Any handler and importer who fails to submit reports and remittances according to the provisions of § 1210.518 shall be subject to appropriate action by the Board which may include one or more of the following actions:

(a) Audit of the handler's and importer's books and records to determine the amount owed the Board.

(b) Establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10801, Feb. 28, 1995]

§ 1210.520 Refunds.

Each importer of less than 150,000 pounds of watermelons during any calendar year shall be entitled to apply for a refund of the assessments paid in

an amount equal to the amount paid by domestic producers.

(a) *Application form.* The Board shall make available to all importers a refund application form.

(b) *Submission of refund application to the Board.* The refund application form shall be submitted to the Board within 90 days of the last day of the year the watermelons were actually imported. The refund application form shall contain the following information:

(1) Importer's name and address;

(2) Number of hundredweight of watermelon on which refund is requested;

(3) Total amount to be refunded;

(4) Proof of payment as described below; and

(5) Importer's signature.

(c) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board shall accompany the importer's refund application. An importer must submit a copy of the importer's report or a cancelled check. Evidence submitted with a refund application shall not be returned to the applicant.

(d) *Payment of refund.* Immediately after receiving the properly executed application for refund, the Board shall make remittance to the applicant.

[60 FR 10801, Feb. 28, 1995]

§ 1210.521 Reports of disposition of exempted watermelons.

The Board may require reports by handlers or importers on the handling/importing and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than 10 acres of watermelons or in the case of importers, the importing of less than 150,000 pounds per year. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

[60 FR 10801, Feb. 28, 1995]

RECORDS

§ 1210.530 Retention period for records.

Each handler and importer required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify such reports.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10801, Feb. 28, 1995]

§ 1210.531 Availability of records.

Each handler and importer required to make reports pursuant to this subpart shall make available for inspection and copying by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10801, Feb. 28, 1995]

§ 1210.532 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and importers and all information with respect to refunds of assessments made to importers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

[60 FR 10801, Feb. 28, 1995]

MISCELLANEOUS

§ 1210.540 OMB assigned numbers.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Control Number 0581–0093, except that Board member nominee background information sheets are assigned OMB Control Number 0505–0001.

[58 FR 3356, Jan. 8, 1993]

PART 1214—KIWIFRUIT RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Subparts A–B [Reserved]

Subpart C—Procedure for the Conduct of Referenda in Connection With the Kiwifruit Research, Promotion, and Consumer Information Order

Sec.
1214.200 General.
1214.201 Definitions.
1214.202 Voting.
1214.203 Instructions.
1214.204 Subagents.
1214.205 Ballots.
1214.206 Referendum report.
1214.207 Confidential information.

AUTHORITY: 7 U.S.C. 7461–7473.

SOURCE: 62 FR 54312, Oct. 17, 1997, unless otherwise noted.

Subparts A–B [Reserved]

Subpart C—Procedure for the Conduct of Referenda in Connection With the Kiwifruit Research, Promotion, and Consumer Information Order

§ 1214.200 General.

A referendum to determine whether eligible producers and importers favor the issuance of a proposed Kiwifruit Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1214.201 Definitions.

Unless otherwise defined in this section, the definition of terms used in this subpart shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Kiwifruit Research, Promotion, and Consumer Information Order.

(c) *Referendum agent* or agent means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and wife who has title to, or leasehold interest in, kiwifruit production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called ''joint ventures,'' wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of kiwifruit and the authority to transfer title to the kiwifruit so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who produced 500 pounds or more of kiwifruit during the representative period and who:

(1) Owns or shares in the ownership of kiwifruit production facilities and equipment resulting in the ownership of the kiwifruit produced;

(2) Rents kiwifruit production facilities and equipment resulting in the ownership of all or a portion of the kiwifruit produced;

(3) Owns kiwifruit production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the kiwifruit produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit who share the risk of loss and receive a share of the kiwifruit produced. No other acquisition of legal title to kiwifruit shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imported 10,000 pounds or more during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced kiwifruit immediately upon release by the U.S.

Customs Service, as well as any persons who act on behalf of others, as agents or broker, to secure the release of kiwifruit from the U.S. Customs Service when such kiwifruit are entered or withdrawn for consumption in the United States.

(h) *Kiwifruit* means all varieties of fresh kiwifruit classified under the species *Actinidia deliciosa* or the genus *Actinidia,* whose fruit is a large berry, oval in shape, with a brown skin covered in hairs, which are grown in or imported into the United States.

§ 1214.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail.

§ 1214.203 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this section, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The total volume of kiwifruit produced by the voting producer during the representative period; and

(3) The total volume of kiwifruit imported by the voting importer during the representative period.

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in presence of an agent of the Office of Inspector General.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1214.204 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions in this subpart. Each individual so appointed may be authorized by the

agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1214.205 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1214.206 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1214.207 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

DEFINITIONS

Sec.
1215.1 Act.
1215.2 Board.
1215.3 Board member.
1215.4 Commerce.
1215.5 Consumer information.
1215.6 Department.
1215.7 Fiscal year.
1215.8 Industry information.
1215.9 Marketing.
1215.10 Part and subpart.
1215.11 Person.
1215.12 Popcorn.
1215.13 Process.
1215.14 Processor.
1215.15 Programs, plans, and projects.
1215.16 Promotion.
1215.17 Research.
1215.18 Secretary.
1215.19 State.
1215.20 United States.

POPCORN BOARD

1215.21 Establishment and membership.
1215.22 Nominations and appointment.
1215.23 Acceptance.
1215.24 Term of office.
1215.25 Vacancies.
1215.26 Removal.
1215.27 Procedure.
1215.28 Compensation and reimbursement.
1215.29 Powers.
1215.30 Duties.

PROMOTION, RESEARCH, CONSUMER INFORMATION, AND INDUSTRY INFORMATION

1215.40 Programs, plans, and projects.
1215.41 Contracts.

EXPENSES AND ASSESSMENTS

1215.50 Budget and expenses.
1215.51 Assessments.
1215.52 Exemption from assessment.
1215.53 Influencing governmental action.

REPORTS, BOOKS, AND RECORDS

1215.60 Reports.
1215.61 Books and records.
1215.62 Confidential treatment.

MISCELLANEOUS

1215.70 Right of the Secretary.
1215.71 Suspension or termination.
1215.72 Proceedings after termination.
1215.73 Effect of termination or amendment.
1215.74 Personal liability.
1215.75 Patents, copyrights, inventions, publications, and product formulations.
1215.76 Amendments.
1215.77 Separability.

Subpart B—Rules and Regulations

DEFINITIONS

1215.100 Terms defined.

EXEMPTION PROCEDURES

1215.300 Exemption procedures.

MISCELLANEOUS

1215.400 OMB control numbers.

AUTHORITY: 7 U.S.C. 7481–7491.

SOURCE: 62 FR 39389, July 22, 1997, unless otherwise noted.

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

DEFINITIONS

§ 1215.1 Act.

Act means the Popcorn Promotion, Research, and Consumer Information Act of 1995, Subtitle E of Title V of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, 7 U.S.C. 7481–7491, and any amendments thereto.

§ 1215.2 Board.

Board means the Popcorn Board established under section 575(b) of the Act.

§ 1215.3 Board member.

Board member means an officer or employee of a processor appointed by the Secretary to serve on the Popcorn Board as a representative of that processor.

§ 1215.4 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1215.5 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of popcorn.

§ 1215.6 Department.

Department means the United States Department of Agriculture.

§ 1215.7 Fiscal year.

Fiscal year means the 12-month period from January 1 through December 31 each year, or such other period as recommended by the Board and approved by the Secretary.

§ 1215.8 Industry information.

Industry information means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the popcorn industry, or activities to enhance the image of the popcorn industry.

§ 1215.9 Marketing.

Marketing means the sale or other disposition of unpopped popcorn for human consumption in a channel of commerce but shall not include sales or disposition to or between processors.

§ 1215.10 Part and subpart.

Part means the Popcorn Promotion, Research, and Consumer Information Order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the Popcorn Promotion, Research, and Consumer Information Order.

§ 1215.11 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1215.12 Popcorn.

Popcorn means unpopped popcorn (Zea Mays L) that is commercially grown, processed in the United States by shelling, cleaning, or drying, and introduced into a channel of commerce.

§ 1215.13 Process.

Process means to shell, clean, dry, and prepare popcorn for the market, but does not include packaging popcorn for the market without also engaging in another activity described in this paragraph.

§ 1215.14 Processor.

Processor means a person engaged in the preparation of unpopped popcorn for the market who owns or who shares the ownership and risk of loss of such popcorn and who processes and distributes over 4 million pounds of popcorn in the market per year.

§ 1215.15 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1215.16 Promotion.

Promotion means any action, including paid advertising, to enhance the image or desirability of popcorn.

§ 1215.17 Research.

Research means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of popcorn.

§ 1215.18 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1215.19 State.

State means each of the 50 States and the District of Columbia.

§ 1215.20 United States.

United States means all of the States.

POPCORN BOARD

§ 1215.21 Establishment and membership.

(a) There is hereby established a Popcorn Board of nine members. The number of members on the Board may be changed by regulation: *Provided*, That the Board consist of not fewer than four members and not more than nine members. The Board shall be composed of popcorn processors appointed by the Secretary under § 1215.24.

(b) For purposes of nominating and appointing processors to the Board, the Secretary shall, to the extent practicable, take into account the geographic distribution of popcorn production.

(c) No more than one officer or employee of a processor may serve as a Board member at the same time.

§ 1215.22 Nominations and appointment.

(a) All nominations for appointments to the Board established under § 1215.21 shall be made as follows:

(1) As soon as practicable after the effective date of this subpart, nominations for appointment to the initial Board shall be obtained from processors by the Secretary. In any subsequent year in which an appointment to the Board is to be made, nominations for positions for which the term will expire at the end of that year shall be obtained from processors at least six months prior to the expiration of terms.

(2) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue a call for nominations in each year for which an appointment to the Board is to be made. The call shall include, at a minimum, the following information:

(i) A list of the vacancies for which nominees may be submitted and qualifications for nomination; and

(ii) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3)(i) Nominations for each position shall be made by processors. Notice shall be publicized to all processors.

(ii) All processors may participate in submitting nominations.

(4) Two nominees must be submitted for each vacancy. If processors fail to nominate a sufficient number of nominees, additional nominees shall be obtained in a manner prescribed by the Secretary.

(b) The Secretary shall appoint the members of the Board from nominations made in accordance with paragraph (a).

(1) The Secretary may reject any nominee submitted. If there is an insufficient number of nominees from whom to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in a manner prescribed by the Secretary.

(2) Whenever processors cannot agree on nominees for a position on the Board under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Board, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

(3) If a processor nominates more than one officer or employee, only one may be appointed to the Board by the Secretary.

§ 1215.23 Acceptance.

Each individual nominated for membership of the Board shall qualify by

filing a written acceptance with the Secretary at the time of nomination.

§ 1215.24 Term of office.

(a) The members of the Board shall serve for terms of three years, except that members appointed to the initial Board shall serve, to the extent practicable, proportionately for terms of two, three, and four years.

(b)(1) Except with respect to terms of office of the initial Board, the term of office for each Board member shall begin on the date the member is seated at the Board's annual meeting or such other date that may be approved by the Secretary.

(2) The term of office for the initial Board member shall begin immediately following the appointment by the Secretary.

(c) Board members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(d) No Board member may serve more than two consecutive three-year terms, except as provided in §1215.25(d). Initial members serving two- or four-year terms may serve one successive three-year term.

§ 1215.25 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary may appoint a successor from the most recent nominations submitted for positions on the Board or the Secretary may obtain nominees to fill such vacancy in such a manner as the Secretary deems appropriate.

(b) Each such successor appointment shall be for the remainder of the term vacated.

(c) A vacancy will not be required to be filled if the unexpired term is less than six months.

(d) If an unexpired term is less than 1.5 years, serving the term shall not prevent the appointee from serving two successive three-year terms.

(e) A Board member shall be disqualified from serving on the Board if such individual ceases to be affiliated with the processor the member represents.

§ 1215.26 Removal.

If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board is known to be engaged in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service will be detrimental to the achievement of the purposes of the Act.

§ 1215.27 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Board, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes by a majority of its members by mail, telephone, facsimile, or any other means of communication. If appropriate, any such action shall be confirmed promptly in writing. In that event, all members must be given prior notice and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in Board minutes.

(d) Meetings of the Board may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has the opportunity to be present either physically or by electronic connection.

(e) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance

with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1215.28 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by such members in the performance of their responsibilities under this subpart.

§ 1215.29 Powers.

The Board shall have the following powers:

(a) To administer the Order in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of the Order;

(c) To select committees and subcommittees of Board members, including an executive committee, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(d) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(e) To disseminate information to processors or industry organizations through programs or by direct contact using the public postal system or other systems;

(f) To propose, receive, evaluate and approve budgets, plans and projects of popcorn promotion, research, consumer information and industry information, as well as to contract with the approval of the Secretary with appropriate persons to implement plans and projects;

(g) To receive, investigate, and report to the Secretary for action any complaints of violations of the Order;

(h) To recommend to the Secretary amendments to the order;

(i) To accept or receive voluntary contributions;

(j) To invest, pending disbursement pursuant to a program, plan or project, funds collected through assessments authorized under this Act provided for in § 1215.51, and any other funds received by the Board in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest bearing account or certificate of deposit or a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(k) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State popcorn processor organizations, or other organizations or entities, for the development and conduct of programs, plans or projects authorized under § 1215.40 and for the payment of the cost of such programs with assessments received pursuant to this subpart; and

(l) Such other powers as may be approved by the Secretary.

§ 1215.30 Duties.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 1215.50;

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing

standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books and records that clearly reflect all the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any processor;

(k) To investigate violations of the Act, order, and regulations issued under the order, conduct audits, and report the results of such investigations and audits to the Secretary for appropriate action to enforce the provisions of the Act, order, and regulations; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the popcorn industry's position in the marketplace, maintain and expand existing markets and uses for popcorn, develop new markets and uses for popcorn, and to carry out programs, plans, and projects designed to provide maximum benefits to the popcorn industry.

PROMOTION, RESEARCH, CONSUMER INFORMATION, AND INDUSTRY INFORMATION

§ 1215.40 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan or project authorized under this subpart. Such programs, plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to popcorn; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of popcorn, and the creation of new uses thereof, to the end that the marketing and use of popcorn may be encouraged, expanded, improved, or made more acceptable.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board may take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Board shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any popcorn will be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

§ 1215.41 Contracts.

The Board shall not contract with any processor for the purpose of promotion or research. The Board may lease physical facilities from a processor for such promotion or research, if such an arrangement is determined to be cost effective by the Board and approved by the Secretary. Any contract or agreement shall provide that:

(a) The contractor or agreeing party shall develop and submit to the Board a program, plan or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(b) Any such program, plan, or project shall become effective upon approval by the Secretary;

(c) The contracting or agreeing party shall keep accurate records of all of its

transactions and make periodic reports to the Board of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Board may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(d) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

EXPENSES AND ASSESSMENTS

§ 1215.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart.

(b) Each budget shall include:

(1) A rate of assessment for such fiscal year calculated, subject to § 1215.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (g) of this section;

(2) A statement of the objectives and strategy for each program, plan, or project;

(3) A summary of anticipated revenue, with comparative data for at least one preceding year;

(4) A summary of proposed expenditures for each program, plan, or project; and

(5) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

(c) In budgeting plans and projects of promotion, research, consumer information, and industry information, the Board shall expend assessment and contribution funds on:

(1) Plans and projects for popcorn marketed in the United States or Canada in proportion to the amount of assessments projected to be collected on domestically marketed popcorn (including Canada); and

(2) Plans and projects for exported popcorn in proportion to the amount of assessments projected to be collected on exported popcorn (excluding Canada).

(d) The Board is authorized to incur such reasonable expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may also receive funds provided through the Foreign Agricultural Service of the United States Department of Agriculture for foreign marketing activities.

(f) As stated in section 75(f)(4)(A)(ii) of the Act, the Board shall reimburse the Secretary, from funds received by the Board, for costs incurred by the Secretary in implementing and administering this subpart: *Provided,* That the costs incurred by the Secretary to be reimbursed by the Board, excluding legal costs to defend and enforce the order, shall not exceed 15 percent of the projected annual revenues of the Board.

(g) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in this reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(h) With the approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board during its first year of operation only.

§ 1215.51 Assessments.

(a) Any processor marketing popcorn in the United States or for export shall pay an assessment on such popcorn at

the time of introduction to market at a rate as established in § 1215.51(c) and shall remit such assessment to the Board in such form and manner as prescribed by the Board.

(b) Any person marketing popcorn of that person's own production to consumers in the United States either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such popcorn at the rate set forth in paragraph § 1215.51(c), and in such form and manner as prescribed by the Board.

(c) Except as otherwise provided, the rate of assessment shall be 5 cents per hundredweight of popcorn. The rate of assessment may be raised or lowered as recommended by the Board and approved by the Secretary, but shall not exceed 8 cents per hundredweight in any fiscal year.

(d) The collection of assessments under this section shall commence on all popcorn processed in the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments until the Board is constituted, then remit such assessments to the Board.

(e) Each person responsible for remitting assessments under paragraphs (a) and (b) of this section shall remit the amounts due from assessments to the Board on a quarterly basis no later than the last day of the month following the last month in the previous quarter in which the popcorn was marketed, in such manner as prescribed by the Board.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(g) The Board shall impose an additional charge on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(h) In addition, persons failing to remit total assessments due in a timely manner may also be subject to penalties and actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36.

(i) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Board by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (f), (g), and (h) of this section shall be applicable.

(j) The Board, with the approval of the Secretary, may enter into agreements authorizing other organizations or entities to collect assessments on its behalf. Any such organization or entity shall be required to maintain the confidentiality of such information as is required by the Board for collection purposes. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

(k) The Board is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Board shall not be obligated to pay interest on any advance payment.

§ 1215.52 Exemption from assessment.

(a) Persons that process and distribute 4 million pounds or less of popcorn annually, based on the previous year, shall be exempted from assessment.

(b) To claim such exemption, such persons shall apply to the Board, in the form and manner prescribed in the rules and regulations.

§ 1215.53 Influencing governmental action.

No funds received by the Board under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend

to the Secretary amendments to this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1215.60 Reports.

(a) Each processor marketing popcorn directly to consumers, and each processor responsible for the remittance of assessments under § 1215.51, shall be required to report quarterly to the Board, on a form provided by the Board, such information as may be required under this subpart or any rule and regulations issued thereunder. Such information shall be subject to § 1215.62 and include, but not be limited to, the following:

(1) The processor's name, address, telephone number, and Social Security Number or Employer Identification Number;

(2) The date of report, which is also the date of payment to the Board;

(3) The period covered by the report;

(4) The number of pounds of popcorn marketed or in any other manner are subject to the collection of assessments;

(5) The amount of assessments remitted;

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of popcorn divided by 100 and multiplied by the applicable assessment rate; and

(7) The amount of assessments remitted on exports (not including Canada).

(b) The words ''final report'' shall be shown on the last report at the end of each fiscal year.

§ 1215.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Board or the Secretary such books and records as are deemed necessary by the Board, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1215.62 Confidential treatment.

(a) All information obtained from books, records, or reports under the Act, this subpart, and the rule and regulations issued thereunder shall be kept confidential by all persons, including all employees, agents, and former employees and agents of the Board; all officers, employees, agents, and former officers, employees, and agents of the Department; and all officers, employees, agents, and former officers, employees, and agents of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or processors. Only those persons having a specific need for such information to administer effectively the provisions of this part shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this part.

(b) No information obtained under the authority of this part may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of the Act and any investigatory or enforcement action necessary for the implementation of the Act.

(c) Nothing in paragraph (a) of this section may be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this part or statistical data collected therefrom, which statements do not identify the information furnished by any person;

(2) The publication, by direction of the Secretary, of the name of any person who has violated this part, together with a statement of the particular provisions of this part violated by such person.

(d) Any person who knowingly violated the provisions of this section, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, or if the person is an officer, employee,

or agent of the Board or the Department, that person shall be removed from office or terminated from employment as applicable.

MISCELLANEOUS

§ 1215.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, contracts, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1215.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b) The Secretary may conduct additional referenda to determine whether processors favor termination or suspension of this subpart three years after the effective date, on the request of a representative group comprising 30 percent or more of the number of processors who have been engaged in processing during a representative period as determined by the Secretary.

(c) Whenever the Secretary determines that suspension or termination of this subpart is favored by two-thirds or more of the popcorn processors voting in a referendum under paragraph (b) of this section who, during a representative period determined by the Secretary, have been engaged in the processing, the Secretary shall:

(1) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(d) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1215.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Board, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such other persons full title and right to all of the funds, property, and claims vested in the Board or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information programs, plans, or projects authorized under this subpart.

§ 1215.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1215.74 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1215.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Board under this subpart shall be the property of the United States Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Board and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1215.72 shall apply to determine disposition of all such property.

§ 1215.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1215.77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart B—Rules and Regulations

DEFINITIONS

§ 1215.100 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Popcorn Promotion, Research, and Consumer Information Order of this part.

EXEMPTION PROCEDURES

§ 1215.300 Exemption procedures.

(a) Any processor who markets 4 million pounds or less of popcorn annually and who desires to claim an exemption from assessments during a fiscal year as provided in § 1214.52 of this part shall apply to the Board, on a form provided by the Board, for a certificate of exemption. Such processor shall certify that the processor's marketing of popcorn during the previous fiscal year was 4 million pounds or less.

(b) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(d) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt popcorn.

MISCELLANEOUS

§ 1215.400 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093, except for the Promotion Board nominee background statement form which is assigned OMB control number 0505–0001.

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Peanut Promotion, Research, and Information Order

DEFINITIONS

Sec.
1216.1 Act.
1216.2 Additional peanuts.
1216.3 Area marketing association.
1216.4 Board.
1216.5 Conflict of interest.
1216.6 Contract export additional peanuts.
1216.7 Department.
1216.8 Farm Service Agency.
1216.9 Farmers stock peanuts.
1216.10 First handler.
1216.11 Fiscal year.
1216.12 Handle.
1216.13 Information.
1216.14 Market.
1216.15 Minor peanut-producing states.
1216.16 Order.
1216.17 Part and subpart.
1216.18 Peanuts.
1216.19 Peanut producer organization.
1216.20 Person.
1216.21 Primary peanut-producing states.
1216.22 Producer.
1216.23 Promotion.
1216.24 Quota peanuts.
1216.25 Research.
1216.26 Secretary.
1216.27 Suspend.
1216.28 State.
1216.29 Terminate.
1216.30 United States.

NATIONAL PEANUT BOARD

1216.40 Establishment and membership.
1216.41 Nominations.
1216.42 Selection.
1216.43 Term of office.
1216.44 Vacancies.
1216.45 Alternate members.
1216.46 Procedure.
1216.47 Compensation and reimbursement.
1216.48 Powers and duties.
1216.49 Prohibited activities.

EXPENSES AND ASSESSMENTS

1216.50 Budget and expenses.
1216.51 Assessments.
1216.52 Programs, plans, and projects.
1216.53 Independent evaluation.
1216.54 Operating reserve.
1216.55 Investment of funds.

REPORTS, BOOKS, AND RECORDS

1216.60 Reports.
1216.61 Books and records.
1216.62 Confidential treatment.

CERTIFICATION OF PEANUT PRODUCER ORGANIZATIONS

1216.70 Certification.

MISCELLANEOUS

1216.80 Right of the Secretary.
1216.81 Implementation of the Order.
1216.82 Suspension and termination.
1216.83 Proceedings after termination.
1216.84 Effect of termination or amendment.
1216.85 Personal liability.
1216.86 Separability.
1216.87 Amendments.
1216.88 Patents, copyrights, trademarks, information, publications, and product formulations.

Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

1216.100 General.
1216.101 Definitions.
1216.102 Voting.
1216.103 Instructions.
1216.104 Subagents.
1216.105 Ballots.
1216.106 Referendum report.
1216.107 Confidential information.

AUTHORITY: 7 U.S.C. 7401–7425.

SOURCE: 64 FR 20105, Apr. 23, 1999, unless otherwise noted.

Subpart A—Peanut Promotion, Research, and Information Order

SOURCE: 64 FR 41256, July 29, 1999, unless otherwise noted.

DEFINITIONS

§ 1216.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Public Law 104–127, 110 Stat. 1029), or any amendments thereto.

§ 1216.2 Additional peanuts.

Additional peanuts means peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

§ 1216.3 Area marketing association.

Area marketing association means an association selected and approved by the Secretary to conduct activities under regulations of the Department's

Farm Service Agency. Under an interagency agreement, area marketing associations may assist in the collection of assessments under this subpart. The approved area marketing associations and the areas served by such associations are as follows:

(a) *GFA Peanut Association of Camilla, Georgia (GFA).* GFA serves the southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the states of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(b) *Peanut Growers Cooperative Marketing Association of Franklin, Virginia (PGCMA).* PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(c) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA).* SWPGA serves the southwestern area consisting of the states of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, and all other territories of the United States not listed in paragraph (a) or (b) of this section.

§ 1216.4 Board.

Board means the administrative body referred to as the National Peanut Board established pursuant to § 1216.40.

§ 1216.5 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1216.6 Contract export additional peanuts.

Contract export additional peanuts are additional peanuts for exportation, including peanuts for crushing for exportation, for which a contract has been entered into between a first handler and a producer.

§ 1216.7 Department.

Department means the U.S. Department of Agriculture.

§ 1216.8 Farm Service Agency.

Farm Service Agency or FSA means the U.S. Department of Agriculture's Farm Service Agency.

§ 1216.9 Farmers stock peanuts.

Farmers stock peanuts means picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

§ 1216.10 First handler.

First handler means any person who handles peanuts in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman, or other intermediary between the producer and the person handling.

§ 1216.11 Fiscal year.

Fiscal year is synonymous with crop year and means the 12-month period beginning with August 1 of any year and ending with July 31 of the following year, or such other period as determined by the Board and approved by the Secretary.

§ 1216.12 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning in-shell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned in-shell or shelled peanuts, or other activity causing peanuts to enter

the current of commerce: *Provided,* that this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and: *Provided further,* that this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 1216.13 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of peanuts on a national or international basis. These include:

(a) *Consumer information,* which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of peanuts; and

(b) *Producer information,* which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the peanut industry, and activities to enhance the image of the peanut industry.

§ 1216.14 Market.

Market means to sell or otherwise dispose of peanuts into interstate, foreign, or intrastate commerce by buying, marketing, distributing, or otherwise placing peanuts into commerce.

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

§ 1216.16 Order.

Order means an Order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1216.17 Part and subpart.

Part means the Peanut Promotion, Research, and Information Order and all rules, regulations, and supplemental Orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

§ 1216.18 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both in-shell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

§ 1216.19 Peanut producer organization.

Peanut producer organization means a state-legislated peanut promotion, research, and education commission or organization. For states without a state-legislated peanut promotion, research, and education commission or organization, ''peanut producer organization'' means any organization which has the primary purpose of representing peanut producers and has peanut producers as members.

§ 1216.20 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, *Provided,* these states maintain three-year average production of at least 10,000 tons of peanuts.

§ 1216.22 Producer.

Producer means any person engaged in the production and sale of peanuts and who owns, or shares the ownership and risk of loss of the crop. This does not include quota holders who do not share in the risk of loss of the crop.

§ 1216.23 Promotion.

Promotion means any action taken by the Board under this Order, including paid advertising, to present a favorable

image of peanuts to the public to improve the competitive position of peanuts in the marketplace, including domestic and international markets, and to stimulate sales of peanuts.

§ 1216.24 Quota peanuts.

Quota peanuts means peanuts which are:

(a) Eligible for domestic edible uses; and

(b) Marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of 7 CFR Part 729 and are not in excess of the effective farm poundage quota established for the farm on which such peanuts were produced.

§ 1216.25 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production.

§ 1216.26 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1216.27 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, to temporarily prevent the operation of an Order, or part thereof, during a particular period of time specified in the rule.

§ 1216.28 State.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1216.29 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, to cancel permanently the operation of an Order, or part thereof, beginning on a date certain specified in the rule.

§ 1216.30 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

NATIONAL PEANUT BOARD

§ 1216.40 Establishment and membership.

(a) *Establishment of a National Peanut Board.* There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 10 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) *Nine members and alternates.* One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

(2) The minor peanut-producing states shall collectively have one at-large member and one alternate, who are producers, to be appointed by the Secretary from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership.

(b) *Adjustment of membership.* At least once in each five-year period, but not more frequently than once in each three-year period, the Board, or a person or agency designated by the Board, shall review the geographical distribution of peanuts in the United States and make recommendation(s) to the Secretary to continue without change, or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

§ 1216.41 Nominations.

(a) All nominations authorized under § 1216.40 shall be made within such a period of time as the Secretary shall prescribe. Eligible peanut producer organizations within each state as certified pursuant to § 1216.70 shall nominate two qualified persons for each member and

each alternate member. The nominees shall be elected at an open meeting among peanut producers eligible to serve on the Board. Any certified peanut producer organization representing a minor peanut-producing state may nominate two eligible persons for each member and two eligible persons for each alternate member.

(b) As soon as practicable after this subpart becomes effective, the Secretary shall obtain nominations for appointment to the initial promotion Board from certified nominating organizations. In any subsequent year in which an appointment to the Board is to be made, nominations for positions whose terms will expire shall be obtained from certified nominating organizations by the Board's staff and submitted to the Secretary by May 1 of such year, or other such date as approved by the Secretary.

(c) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue the call for nominations by March 1 of each year.

(d) The nomination meeting shall be announced 30 days in advance:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as deemed advisable.

(e) At nominations meetings, Department personnel will be present to oversee and to verify eligibility and count ballots.

§ 1216.42 Selection.

From the nominations, the Secretary shall select the members of the Board and alternates for each primary peanut-producing state. The Secretary shall select one member and one alternate from all nominations submitted by certified peanut producer organizations representing minor peanut-producing states.

§ 1216.43 Term of office.

All members and alternates of the Board shall each serve for terms of three years, except that the members and alternates appointed to the initial Board shall serve proportionately for two-, three-, and four-year terms, with the length of the terms determined at random. No member or alternate may serve more than two consecutive three-year terms. An alternate, after serving two consecutive three-year terms, may serve as a member for an additional two consecutive three-year terms. A member, after serving two consecutive three-year terms, may serve as an alternate for an additional two consecutive three-year terms. Each member and alternate shall continue to serve until a successor is selected and has qualified.

(a) Those members serving initial terms of two or four years may serve one successive three-year term.

(b) Any successor serving one year or less may serve two consecutive three-year terms.

§ 1216.44 Vacancies.

To fill any vacancy resulting from the failure to qualify of any person selected as a member or as an alternate member of the Board, or in the event of death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in § 1216.40.

§ 1216.45 Alternate members.

An alternate member of the Board, during the absence of the member for the primary peanut-producing state or at-large member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that state or at-large member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1216.46 Procedure.

(a) A majority of the members of the Board, including alternate members acting for members, shall constitute a quorum.

(b) At assembled meetings, all votes shall be cast in person. Board actions shall be weighted by value of production as determined by a primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large Board member's vote shall be weighted by the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income derived from all peanut sales. Any Board action shall require the concurring votes of members or alternates from states representing more than 50 percent of total U.S. gross farm income derived from all peanut sales, plus an additional two votes from any other Board members, provided a minimum of five votes concur.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not time to call an assembled meeting of the Board, the Board may also take action as prescribed in this section by mail, facsimile, telephone, or any telecommunication method appropriate for the conduct of business, but any such action shall be confirmed in writing within 30 days.

(d) There shall be no voting by proxy.

(e) The chairperson shall be a voting member.

§ 1216.47 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1216.48 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1216.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(j) To act as intermediary between the Secretary and any producer or first handler;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the peanut industry's position in the marketplace; maintain and expand existing markets and uses for peanuts; and to carry out programs, plans, and projects designed to provide maximum benefits to the peanut industry.

§ 1216.49 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, including local, state, national, and international, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order, that is false or misleading or disparaging to another agricultural commodity.

EXPENSES AND ASSESSMENTS

§ 1216.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent

with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(i) The Board shall allocate, to the extent practicable, no less than 80 percent of the assessments collected on all peanuts available for any fiscal year on national and regional promotion, research, and information activities. The Board shall allocate, to the extent practicable, no more than 20 percent of assessments collected on all peanuts available for any fiscal year for use in state or regional research programs. Specific percentages and amounts shall be determined annually by the Board, with the approval of the Secretary.

(j) Certified peanut producer organizations may submit requests for funding for research and/or generic promotion projects. Amounts approved for each state shall not exceed the pro rata Share of funds available for that State as determined by the Board and approved by the Secretary. Amounts allocated by the Board for state research or promotion activities will be based on requests submitted to the Board when it is determined that they meet the goals and objectives stated in the Order.

(k) Assessments collected, less pro rata administrative expenses, from the gross sales of contract export additional peanuts shall be allocated by the Board for the promotion and related research of export peanuts.

(l) The Board shall determine annually how total funds shall be allocated pursuant to paragraphs (i), (j), and (k) of this section, with the approval of the Secretary.

§ 1216.51 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon producers in a manner prescribed by the Secretary.

(b) Each first handler, at such times and in such manner as prescribed by the Secretary, shall collect from each producer and pay assessments to the Board on all peanuts handled, including peanuts produced by the first handler, no later than 60 days after the last day of the month in which the peanuts were marketed.

(c) Such assessments shall be levied at a rate of 1 percent of the price paid for all farmers stock peanuts sold. Price paid is the value of segment entry on the FSA 1007 form.

(d) For peanuts placed under loan with the Department's Commodity Credit Corporation, each area marketing association shall remit to the Board the following:

(1) One (1) percent of the initial price paid for either quota or additional peanuts no more than 60 days after the last day of the month in which the peanuts were placed under loan; and

(2) One (1) percent of the profit from the sale of the peanuts within 60 days

after the final day of the area association's fiscal year.

(e) All assessments collected under this section are to be used for expenses and expenditures pursuant to this Order and for the establishment of an operating reserve as prescribed in the Order.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(i) The assessment rate may not be increased unless the new rate is approved by a referendum among eligible producers.

§ 1216.52 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to peanuts; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of peanuts and peanut products, and the creation of new products thereof, to the end that marketing and use of peanuts may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of peanuts.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of peanuts or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Peanuts of all domestic origins shall be treated equally.

§ 1216.53 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§ 1216.54 Operating reserve.

The Board shall establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in a reserve so established; *Provided*, that funds in the reserve shall not exceed any fiscal year's anticipated expenses.

§ 1216.55 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any state or any political subdivision of a state; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

REPORTS, BOOKS, AND RECORDS

§ 1216.60 Reports.

(a) Each producer and first handler subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(1) Number of pounds of peanuts produced or handled;

(2) Price paid to producers (entry in value of segment section on the FSA 1007 form); and

(3) Total assessments collected.

(b) First Handlers shall submit monthly reports to the Board. These reports shall accompany the payment of the collected assessments and shall be due 60 days after the last day of the month in which the peanuts were marketed.

§ 1216.61 Books and records.

Each first handler and producer subject to this subpart shall maintain and make available for inspection by the Secretary and employees and agents of the Board such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall include but are not limited to the following: copies of FSA 1007 forms, the names and address of producers, and the date the assessments were collected. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1216.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, importers, exporters, or handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

CERTIFICATION OF PEANUT PRODUCER ORGANIZATIONS

§ 1216.70 Certification.

(a) Organizations receiving certification from the Secretary will be entitled to submit nominations for Board membership to the Secretary for appointment and to submit requests for funding to the Board.

(b) For major peanut-producing states, state-legislated peanut promotion, research, and information organizations may request certification, provided the state-legislated promotion program submits a factual report that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(c) If a state-legislated peanut promotion, research and information organization in a major peanut-producing state does not elect to seek certification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any peanut producer organization whose primary purpose is

to represent peanut producers within a primary peanut-producing state, or any other organization which has peanut producers as part of its membership, may request certification. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(d) For minor peanut-producing states, any organization that has peanut producers as part of its membership may request certification.

(e) The information required for certification by the Secretary may include, but is not limited to, the following:

(1) The geographic distribution within the state covered by the organization's active membership;

(2) The nature and size of the organization's active membership in the state, proportion of the organization's active membership accounted for by producers, a map showing the peanut-producing counties in the state in which the organization has members, the volume of peanuts produced in each county, the number of peanut producers in each county, and the size of the organization's active peanut producer membership in each county;

(3) The extent to which the peanut producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization;

(7) The organization's ability and willingness to further the aims and objectives of the Act and Order; and,

(8) Demonstrated experience administering generic state promotion and research programs.

(f) The Secretary's determination as to eligibility or certification of an organization shall be final.

MISCELLANEOUS

§ 1216.80 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1216.81 Implementation of the Order.

The Order shall not become effective unless:

(a) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(b) The Order is approved by a simple majority of the peanut producers as defined in § 1216.21 voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

§ 1216.82 Suspension and termination.

(a) The Secretary shall suspend or terminate this subpart or a provision thereof if the Secretary finds that this subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) Every five years, the Secretary shall hold a referendum to determine whether peanut producers favor the continuation of the Order. The Secretary will also conduct a referendum if 10 percent or more of all eligible peanut producers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

(c) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a simple majority of the producers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

(d) If, as a result of the referendum conducted under paragraph (b) of this section, the Secretary determines that

this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an Orderly manner.

§ 1216.83 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the peanut producer organizations, certified pursuant to § 1216.70, in the interest of continuing peanut promotion, research, and information programs.

§ 1216.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1216.85 Personal liability.

No member or alternate member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

§ 1216.86 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1216.87 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1216.88 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the

use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1216.82 shall apply to determine disposition of all such property.

Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

§ 1216.100 General.

Referenda to determine whether eligible peanut producers favor the issuance, amendment, suspension, or termination of a Peanut Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1216.101 Definitions.

The following definitions apply to this subpart:

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Peanut Promotion, Research, and Information Order.

(c) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a peanut farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(f) *Eligible producer* means any person who is engaged in the production and sale of peanuts in the United States and who:

(1) Owns, or shares the ownership and risk of loss of, the crop. This does not include quota holders who do not share in the risk of loss of the crop;

(2) Rents peanut production facilities and equipment resulting in the ownership of all or a portion of the peanuts produced;

(3) Owns peanut production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the peanuts produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts who share the risk of loss and receive a share of the peanuts produced. No other acquisition of legal title to peanuts shall be deemed to result in persons becoming eligible producers.

§ 1216.102 Voting.

(a) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer, or an administrator, executor, or trustee or an eligible producing entity may cast a ballot on behalf of such producer. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer, or an administrator, executive, or trustee of an eligible producing entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1216.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Peanut Promotion, Research, and Information Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1216.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1216.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1216.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1216.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Blueberry Promotion, Research, and Information Order

DEFINITIONS

Sec.
1218.1 Act.
1218.2 Blueberries.
1218.3 Conflict of interest.
1218.4 Crop year.
1218.5 Department.
1218.6 Exporter.
1218.7 First handler.
1218.8 Fiscal period.
1218.9 Importer.
1218.10 Information.
1218.11 Market or marketing.
1218.12 Order.
1218.13 Part and subpart.
1218.14 Person.
1218.15 Processed blueberries.
1218.16 Producer.
1218.17 Promotion.
1218.18 Research.
1218.19 Secretary.
1218.20 Suspend.
1218.21 Terminate.
1218.22 United States.
1218.23 USABC.

U.S.A. BLUEBERRY COUNCIL

1218.40 Establishment and membership.
1218.41 Nominations and appointments.
1218.42 Term of office.
1218.43 Vacancies.
1218.44 Alternate members.
1218.45 Procedure.
1218.46 Compensation and reimbursement.
1218.47 Powers and duties.
1218.48 Prohibited activities.

EXPENSES AND ASSESSMENTS

1218.50 Budget and expenses.
1218.51 Financial statements.
1218.52 Assessments.
1218.53 Exemption procedures.
1218.54 Programs, plans, and projects.
1218.55 Independent evaluation.
1218.56 Patents, copyrights, trademarks, information, publications, and product formulations.

REPORTS, BOOKS, AND RECORDS

1218.60 Reports.
1218.61 Books and records.
1218.62 Confidential treatment.

MISCELLANEOUS

1218.70 Right of the Secretary.
1218.71 Referenda.
1218.72 Suspension and termination.
1218.73 Proceedings after termination.
1218.74 Effect of termination or amendment.
1218.75 Personal liability.
1218.76 Separability.
1218.77 Amendments.
1218.78 OMB control numbers.

Subpart B—Procedure for the Conduct of Referenda in Connection with the Blueberry Promotion, Research, and Information Order

1218.100 General.
1218.101 Definitions.
1218.102 Voting.
1218.103 Instructions.
1218.104 Subagents.
1218.105 Ballots.
1218.106 Referendum report.
1218.107 Confidential information.

AUTHORITY: U.S.C. 7401—7425.

SOURCE: 65 FR 7654, Feb. 15, 2000, unless otherwise noted.

Subpart A—Blueberry Promotion, Research, and Information Order

SOURCE: 65 FR 43963, July 17, 2000, unless otherwise noted.

DEFINITIONS

§ 1218.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Pub. L. 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1218.2 Blueberries.

Blueberries means cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry Vaccinium *Angustifolium*.

§ 1218.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the U.S.A. Blueberry Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the USABC for anything of economic value.

§ 1218.4 Crop year.

Crop year means the 12-month period from November 1 through October 31 of the following year or such other period approved by the Secretary.

§ 1218.5 Department.

Department means the U.S. Department of Agriculture.

§ 1218.6 Exporter.

Exporter means a person involved in exporting blueberries from another country to the United States.

§ 1218.7 First handler.

First handler means any person, (excluding a common or contract carrier), receiving blueberries from producers and who as owner, agent, or otherwise ships or causes blueberries to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing blueberries in commercial quantities. This definition includes a retailer, except a retailer who purchases or acquires from, or handles on behalf of any producer, blueberries. The term first handler includes a producer who handles or markets blueberries of the producer's own production.

§ 1218.8 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as approved by the Secretary.

§ 1218.9 Importer.

Importer means any person who imports fresh or processed blueberries into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles fresh or processed blueberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such blueberries.

§ 1218.10 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of blueberries on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of blueberries; and

(b) *Industry information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the blueberry industry, and activities to enhance the image of the blueberry industry.

§ 1218.11 Market or marketing.

(a) *Marketing* means the sale or other disposition of blueberries in any channel of commerce.

(b) To *market* means to sell or otherwise dispose of blueberries in interstate, foreign, or intrastate commerce.

§ 1218.12 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1218.13 Part and subpart.

Part means the Blueberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

§ 1218.14 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1218.15 Processed blueberries.

Processed blueberries means blueberries which have been frozen, dried, pureed, or made into juice.

§ 1218.16 Producer.

Producer means any person who grows blueberries in the United States for sale in commerce, or a person who is engaged in the business of producing,

or causing to be produced for any market, blueberries beyond the person's own family use and having value at first point of sale.

§ 1218.17 Promotion.

Promotion means any action taken to present a favorable image of blueberries to the general public and the food industry for the purpose of improving the competitive position of blueberries both in the United States and abroad and stimulating the sale of blueberries. This includes paid advertising and public relations.

§ 1218.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of blueberries, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value, health research, and marketing of blueberries.

§ 1218.19 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1218.20 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1218.21 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1218.22 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1218.23 USABC.

USABC, or U.S.A. Blueberry Council, means the administrative body established pursuant to § 1218.40.

U.S.A. BLUEBERRY COUNCIL

§ 1218.40 Establishment and membership.

(a) *Establishment of the U.S.A. Blueberry Council*. There is hereby established a U.S.A. Blueberry Council, hereinafter called the USABC, composed of no more than 13 members and alternates, appointed by the Secretary from the nominations as follows:

(1) One producer member and alternate from each of the following regions:

(i) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(ii) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(iii) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, D.C., and West Virginia.

(iv) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(2) One producer member and alternate from each of the top five blueberry producing states, based upon the average of the total tons produced over

the previous three years. Average tonnage will be based upon North American Blueberry Council production figures for the initial election and production and assessment figures generated by the USABC thereafter.

(3) One importer and alternate.

(4) One exporter and alternate shall be filled by foreign blueberry producers currently shipping blueberries into the United States from the largest foreign blueberry production area, based on a three-year average.

(5) One first handler member and alternate shall be filled by a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries.

(6) One public member and alternate.

(b) *Adjustment of membership*. At least once every five years, the USABC will review the geographical distribution of United States production of blueberries and the quantity of imports. The review will be conducted through an audit of state crop production figures and USABC assessment receipts. If warranted, the USABC will recommend to the Secretary that membership on the USABC be altered to reflect any changes in geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the USABC.

§ 1218.41 Nominations and appointments.

(a) Voting for regional and state representatives will be made by mail ballot.

(b) In a case where a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members and alternates to serve on the USABC. At least two nominees shall be submitted to the Secretary for each member and for each alternate.

(c) Nomination and election of regional, and state representatives where no commission or order is in place will be handled by the USABC, provided that the initial nominations will be handled by the North American Blueberry Council. The USABC will seek nominations for members and alternates from the specific states and/or regions. Nominations will be returned to the USABC and placed on a ballot which will then be sent to producers in the state and/or region for vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(d) Nominations for the importer, exporter, first handler, and public member positions will be made by the USABC. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(e) From the nominations, the Secretary shall select the members of the USABC and alternates for each position on the USABC.

§ 1218.42 Term of office.

USABC members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A USABC member may serve as an alternate during the years the member is ineligible for a member position. When the USABC is first established, the state representatives, first handler member, and their respected alternates will be assigned initial terms of three years. Regional representatives, the importer member, the exporter member, public member, and their alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. USABC nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

§ 1218.43 Vacancies.

(a) In the event that any member of the USABC ceases to be a member of the category of members from which the member was appointed to the USABC, such position shall automatically become vacant.

(b) If a member of the USABC consistently refuses to perform the duties of a member of the USABC, or if a member of the USABC engages in acts of dishonesty or willful misconduct,

the USABC may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the USABC shows adequate cause, the Secretary shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be appointed in the manner specified in § 1218.40 and § 1218.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1218.44 Alternate members.

An alternate member of the USABC, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that both a producer member of the USABC and the alternate are unable to attend a meeting, the USABC may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1218.45 Procedure.

(a) At a USABC meeting, it will be considered a quorum when a minimum of seven members, or their alternates serving in the absence, are present.

(b) At the start of each fiscal period, the USABC will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All USABC members and alternates will receive a minimum of 10 days advance notice of all USABC and committee meetings.

(d) Each member of the USABC will be entitled to one vote on any matter put to the USABC, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the USABC members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Alternates may also be assigned to committees as necessary. Committees may also consist of individuals other than USABC members and such individuals may vote in committee meetings. These committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the USABC.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the USABC such action is considered necessary, the USABC may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the USABC. All votes shall be recorded in USABC minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member.

(i) The organization of the USABC and the procedures for the conducting of meetings of the USABC shall be in accordance with its bylaws, which shall be established by the USABC and approved by the Secretary.

§ 1218.46 Compensation and reimbursement.

The members of the USABC, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the USABC, incurred by them in the performance of their duties as USABC members.

§ 1218.47 Powers and duties.

The USABC shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the USABC, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the USABC a chairperson, other officers, committees, and subcommittees, as the USABC determines to be appropriate;

(d) To employ persons, other than the members, as the USABC considers necessary to assist the USABC in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the USABC shall develop and submit to the USABC a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the USABC of activities conducted under the contract or agreement; and make such other reports available as the USABC or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the USABC a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the USABC of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the USABC may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a USABC contractor and who receives or otherwise uses funds allocated by the USABC shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1218.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the USABC;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the USABC as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the USABC to the Secretary;

(j) To act as intermediary between the Secretary and any producer, first handler, importer, or exporter;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the USABC considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the blueberry industry's position in the marketplace; maintain and expand existing markets and uses for blueberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the blueberry industry.

§ 1218.48 Prohibited activities.

The USABC may not engage in, and shall prohibit the employees and agents of the USABC from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the USABC under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

EXPENSES AND ASSESSMENTS

§ 1218.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the USABC shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least on preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the USABC's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The USABC is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the USABC for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the USABC.

(e) With approval of the Secretary, the USABC may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the USABC. Any funds borrowed by the USABC shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the USABC.

(f) The USABC may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the USABC shall retain complete control of their use.

(g) The USABC may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(h) The USABC shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(i) The USABC may not expend for administration, maintenance, and functioning of the USABC in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the USABC for that fiscal year. Reimbursements to the Secretary required under paragraph (h) are excluded from this limitation on spending.

(j) The USABC may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided* that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

§ 1218.51 Financial statements.

(a) As requested by the Secretary, the USABC shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The USABC shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1218.52 Assessments.

(a) The funds to cover the Council's expenses shall be paid from assessments on producers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board including those collected pursuant to § 1218.56 and subject to the limitations contained therein.

(b) The collection of assessments on domestic blueberries will be the responsibility of the first handler receiving the blueberries. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments.

(c) Such assessments shall be levied at a rate of $12 per ton on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary, after the first referendum is conducted as stated in § 1218.71(b).

(d) Each importer of fresh and processed blueberries shall pay an assessment to the USABC on blueberries imported for marketing in the United States, through the U.S. Customs Service.

(1) The assessment rate for imported fresh and processed blueberries shall be the same or equivalent to the rate for fresh blueberries produced in the United States.

(2) The import assessment shall be uniformly applied to imported fresh and frozen blueberries that are identified by the numbers 0810.40.0028 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Assessments on other types of imported processed blueberries, such as dried blueberries, puree, and juice, may be added at the recommendation of the USABC with the approval of the Secretary.

(3) The assessments due on imported fresh and processed blueberries shall be paid when they enter or are withdrawn for consumption in the United States.

(e) All assessment payments and reports will be submitted to the office of the USABC. All final payments for a crop year are to be received no later than November 30 of that year. A late payment charge shall be imposed on any handler who fails to remit to the USABC, the total amount for which any such handler is liable on or before the due date established by the USABC. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(g) The USABC may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1218.53 Exemption procedures.

(a) Any producer who produces less than 2,000 pounds of blueberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1218.42 shall apply to the USABC, on a form provided by the USABC, for a certificate of exemption. Such producer shall certify that the producer's production of blueberries shall be less than 2,000 pounds for the fiscal year for which the exemption is claimed. Any importer who imports less than 2,000 pounds of fresh and processed blueberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1218.52 shall apply to the USABC,

on a form provided by the USABC, for a certificate of exemption. Such importer shall certify that the importer's importation of fresh and processed blueberries shall not exceed 2,000 pounds, for the fiscal year for which the exemption is claimed.

(b) On receipt of an application, the USABC shall determine whether an exemption may be granted. The USABC then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. Each producer who is exempt from assessment must provide an exemption number to the first handler in order to be exempt from the collection of an assessment on blueberries. First handlers and importers, except as otherwise authorized by the USABC, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the USABC.

(c) Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the USABC for reimbursement of such assessments paid. No interest will be paid on assessments collected by the U.S. Customs Service. Requests for reimbursement shall be submitted to the USABC within 90 days of the last day of the year the blueberries were actually imported.

(d) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the USABC, on a form provided by the USABC, for a certificate of exemption.

(e) The USABC may require persons receiving an exemption from assessments to provide to the USABC reports on the disposition of exempt blueberries and, in the case of importers, proof of payment of assessments.

§ 1218.54 Programs, plans, and projects.

(a) The USABC shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to fresh and processed blueberries; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of fresh and processed blueberries, and the creation of new products thereof, to the end that the marketing and use of blueberries may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of fresh and processed blueberries.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the USABC shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the USABC to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the USABC that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the USABC shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging another agricultural commodity. Blueberries of all origins shall be treated equally.

§ 1218.55 Independent evaluation.

The USABC shall, not less often than every five years, authorize and fund, from funds otherwise available to the USABC, an independent evaluation of the effectiveness of the Order and other programs conducted by the USABC pursuant to the Act. The USABC shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1218.56 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the USABC

under this subpart shall be the property of the U.S. Government as represented by the USABC and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the USABC; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the USABC; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1218.73 shall apply to determine disposition of all such property.

REPORTS, BOOKS, AND RECORDS

§ 1218.60 Reports.

(a) Each first handler subject to this subpart may be required to provide to the USABC periodically such information as may be required by the USABC, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds handled;

(2) Number of pounds on which an assessment was collected;

(3) Name and address of person from whom the first handler has collected the assessments on each pound handled; and

(4) Date collection was made on each pound handled. All reports are due to the USABC 30 days after the end of the crop year.

(b) Each producer and importer subject to this subpart may be required to provide to the USABC periodically such information as may be required by the USABC, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds produced;

(2) Number of pounds on which an assessment was paid;

(3) Name and address of the producer;

(4) Date collection was made on each pound produced. All reports are due to the USABC 30 days after the end of the crop year.

§ 1218.61 Books and records.

Each first handler, producer, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

§ 1218.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the USABC, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to USABC members, producers, importers, exporters, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1218.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the USABC shall be submitted to the Secretary for approval.

§ 1218.71 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless:

(1) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(b) *Subsequent referenda.* Every five years, the Secretary shall hold a referendum to determine whether blueberry producers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries. The Secretary will also conduct a referendum if 10 percent or more of all eligible blueberry producers and importers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

§ 1218.72 Suspension and termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1218.73 Proceedings after termination.

(a) Upon the termination of this subpart, the USABC shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the USABC. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the USABC, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the USABC under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the USABC and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the USABC or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the USABC and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the blueberry producer organizations in the interest of continuing blueberry promotion, research, and information programs.

§ 1218.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1218.75 Personal liability.

No member, alternate member, or employee of the USABC shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty or willful misconduct.

§ 1218.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1218.77 Amendments.

Amendments to this subpart may be proposed from time to time by the USABC or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1218.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093, except for the USABC nominee background statement form which is assigned OMB control number 0505–001.

Subpart B—Procedure for the Conduct of Referenda in Connection with the Blueberry Promotion, Research, and Information Order

§ 1218.100 General.

Referenda to determine whether eligible blueberry producers and importers favor the issuance, amendment, suspension, or termination of the Blueberry Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1218.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Blueberries* means cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry Vaccinium *Angustifolium*.

(c) *Eligible importer* means any person who imported 2,000 pounds or more of fresh or processed blueberries, that are identified by the numbers 0810.40.0028 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers

used to identify fresh and frozen blueberries. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced blueberries immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of blueberries from the U.S. Customs Service when such blueberries are entered or withdrawn for consumption in the United States.

(d) *Eligible producer* means any person who produced 2,000 pounds or more of blueberries in the United States during the representative period who:

(1) Owns, or shares the ownership and risk of loss of, the crop;

(2) Rents blueberry production facilities and equipment resulting in the ownership of all or a portion of the blueberries produced;

(3) Owns blueberry production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the blueberries produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries who share the risk of loss and receive a share of the blueberries produced. No other acquisition of legal title to blueberries shall be deemed to result in persons becoming eligible producers.

(e) *Order* means the Blueberry Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a blueberry farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(g) *Processed blueberries* means blueberries which have been frozen, dried, pureed, or made into juice.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(i) *Representative period* means the period designated by the Secretary.

(j) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1218.102 Voting.

(a) Each person who is an eligible producer or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1218.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the

Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1218.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1218.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1218.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1218.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Soybean Promotion and Research Order

DEFINITIONS

Sec.
1220.101 Act.
1220.102 Board.
1220.103 Commerce.
1220.104 Committee.
1220.105 Consumer information.
1220.106 [Reserved]
1220.107 Cooperator organization.
1220.108 Department.
1220.109 Eligible organization.
1220.110 First purchaser.
1220.111 Fiscal period.
1220.112 Industry information.
1220.113 Marketing.
1220.114 National nonprofit producer-governed organization.
1220.115 Net market price.
1220.116 Part and subpart.

1220.117 Plans and projects.
1220.118 Person.
1220.119 Producer.
1220.120 [Reserved]
1220.121 Promotion.
1220.122 Qualified State Soybean Board.
1220.123 Referendum.
1220.124 [Reserved]
1220.125 Research.
1220.126 Secretary.
1220.127 Soybean products.
1220.128 Soybeans.
1220.129 State and United States.
1220.130 Unit.

UNITED SOYBEAN BOARD

1220.201 Membership of board.
1220.202 Term of office.
1220.203 Nominations.
1220.204 Appointment.
1220.205 Nominee's agreement to serve.
1220.206 Vacancies.
1220.207 Alternate members.
1220.208 Removal.
1220.209 Procedure.
1220.210 Compensation and reimbursement.
1220.211 Powers of the Board.
1220.212 Duties.

SOYBEAN PROGRAM COORDINATING COMMITTEE

1220.213 Establishment and membership.
1220.214 Term of office.
1220.215 Vacancies.
1220.216 Procedure.
1220.217 Compensation and reimbursement.
1220.218 Officers of the Committee.
1220.219 Powers of the Committee.
1220.220 Duties of the Committee.

EXPENSES AND ASSESSMENTS

1220.222 Expenses.
1220.223 Assessments.
1220.224–1220.227 [Reserved]
1220.228 Qualified State Soybean Boards.
1220.229 Influencing governmental action.
1220.230 Promotion, research, consumer information, and industry information.

REPORTS, BOOKS, AND RECORDS

1220.241 Reports.
1220.242 Books and records.
1220.243 Confidential treatment.

MISCELLANEOUS

1220.251 Proceedings after termination.
1220.252 Effect of termination or amendment.
1220.253 Personal liability.
1220.254 Patents, copyrights, inventions, and publications.
1220.255 Amendments.
1220.256 Separability.
1220.257 OMB control numbers.

Subpart B—Rules and Regulations

DEFINITIONS

1220.301 Terms defined.

ASSESSMENTS

1220.310 Assessments.
1220.311 Collection and remittance of assessments.
1220.312 Remittance of assessments and submission of reports to United Soybean Board or Qualified State Soybean Board.
1220.313 Qualified State Soybean Boards.
1220.314 Document evidencing payment of assessments.
1220.330—120.332 [Reserved]

Subparts C–E [Reserved]

Subpart F—Procedures To Request a Referendum

DEFINITIONS

1220.600 Act.
1220.601 Administrator, AMS.
1220.602 Administrator, FSA.
1220.603 Department.
1220.604 Farm Service Agency.
1220.605 Farm Service Agency County Committee.
1220.606 Farm Service Agency County Executive Director.
1220.607 Order.
1220.608 Person.
1220.609 Producer.
1220.610 Public notice.
1220.611 Representative period.
1220.612 Secretary.
1220.613 Soybeans.
1220.614 State and United States.

PROCEDURES

1220.615 General.
1220.616 Supervision of the process for requesting a referendum.
1220.617 Eligibility.
1220.618 Time and place for requesting a referendum.
1220.619 Facilities.
1220.620 Certification and request form.
1220.621 Certification and request procedure.
1220.622 List of producers requesting a referendum.
1220.623 Challenge of eligibility.
1220.624 Canvassing.
1220.625 Counting requests.
1220.626 Public review.
1220.627 FSA county office report.
1220.628 FSA State office report.
1220.629 Reporting results.
1220.630 Disposition of records.
1220.631 Instructions and forms.

AUTHORITY: 7 U.S.C. 6301–6311.

Subpart A—Soybean Promotion and Research Order

SOURCE: 56 FR 31049, July 9, 1991, unless otherwise noted.

DEFINITIONS

§ 1220.101 Act.

The term *Act* means the Soybean Promotion, Research, and Consumer Information Act, subtitle E of title XIX, of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law No. 101–624, and any amendments thereto.

§ 1220.102 Board.

The term *Board* means the United Soybean Board established under § 1220.201 of this subpart.

§ 1220.103 Commerce.

The term *commerce* means interstate, foreign, or intrastate commerce.

§ 1220.104 Committee.

The term *Committee* means the Soybean Program Coordinating Committee established under § 1220.213 of this subpart.

§ 1220.105 Consumer information.

The term *consumer information* means information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of soybeans or soybean products.

§ 1220.106 [Reserved]

§ 1220.107 Cooperator organization.

The term *Cooperator Organization* means the American Soybean Association, or any successor organization to the American Soybean Association, which conducts foreign market development activities on behalf of soybean producers.

§ 1220.108 Department.

Department means the United States Department of Agriculture.

§ 1220.109 Eligible organization.

The term *eligible organization* means any organization which has been certified by the Secretary pursuant to § 1220.203 of this subpart as being eligible to submit nominations for initial membership on the Board.

§ 1220.110 First purchaser.

The term *first purchaser* means—

(a) except as provided in paragraph (b) of this section, any person buying or otherwise acquiring from a producer soybeans produced by such producer; or

(b) In any case in which soybeans are pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program and the soybeans are forfeited by the producer in lieu of loan repayment, the Commodity Credit Corporation.

[56 FR 31049, July 9, 1991, as amended at 56 FR 42923, Aug. 30, 1991; 57 FR 31095, July 14, 1992]

§ 1220.111 Fiscal period.

The term *fiscal period* means the calendar year or such other annual period as the Board may determine with the approval of the Secretary.

§ 1220.112 Industry information.

The term *industry information* means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the soybean industry, and activities to enhance the image of the soybean industry.

§ 1220.113 Marketing.

The term *marketing* means the sale or other disposition of soybeans or soybean products in any channel of commerce.

§ 1220.114 National nonprofit producer-governed organization.

The term *national nonprofit producer-governed organization* means an organization that—

(a) Is a nonprofit organization pursuant to section 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6)); and

(b) Is governed by a Board of directors of agricultural producers representing soybean producers on a national basis;

§ 1220.115 Net market price.

The term *net market price* means—

(a) except as provided in paragraph (b) of this section, the sales price, or other value received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors, as determined by the Secretary; or

(b) For soybeans pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, and where the soybeans are forfeited by the producer in lieu of loan repayment, the principal amount of the loan.

[56 FR 31049, July 9, 1991, as amended at 56 FR 42923, Aug. 30, 1991; 57 FR 31095, July 14, 1992]

§ 1220.116 Part and subpart.

Part means the Soybean Promotion and Research Order and all rules and regulations issued pursuant to the Act and the Order, and the Order itself shall be a ''Subpart'' of such part.

§ 1220.117 Plans and projects.

Plans and Projects means promotion, research, consumer information, and industry information plans, studies, or projects pursuant to § 1220.230.

§ 1220.118 Person.

The term *person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.119 Producer.

The term *producer* means any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.

§ 1220.120 [Reserved]

§ 1220.121 Promotion.

The term *promotion* means any action, including paid advertising, technical assistance, and trade servicing activities, to enhance the image or desirability of soybeans or soybean products in domestic and foreign markets, and any activity designed to communicate to consumers, importers, processors, wholesalers, retailers, government officials, or other information relating to the positive attributes of soybeans or soybean products or the benefits of importation, use, or distribution of soybeans and soybean products.

§ 1220.122 Qualified State Soybean Board.

The term *Qualified State Soybean Board* means a State soybean promotion entity that is authorized by State law and elects to be the Qualified State Soybean Board for the State in which it operates pursuant to § 1220.228(a)(1). If no such entity exists in a State, the term *Qualified State Soybean Board* means a soybean producer-governed entity—

(a) That is organized and operating within a State;

(b) That receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information programs; and

(c) That meets the criteria, established by the Board and approved by the Secretary, relating to the qualifications of such entity to perform its duties under this part as determined by the Board, and is certified by the Board under § 1220.228(a)(2), with the approval of the Secretary.

§ 1220.123 Referendum.

The term *Referendum* means a referendum, other than referenda defined in § 1220.106 and § 1220.124, to be conducted by the Secretary pursuant to the Act whereby producers shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of producers voting.

§ 1220.124 [Reserved]

§ 1220.125 Research.

The term *research* means any type of study to advance the image, desirability, marketability, production, product development, quality, or functional or nutritional value of soybeans or soybean products, including any research activity designed to identify and analyze barriers to export sales of soybeans and soybean products.

§ 1220.126 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated, the authority to act in the Secretary's stead.

§ 1220.127 Soybean products.

The term *soybean products* means products produced in whole or in part from soybeans or soybean byproducts.

§ 1220.128 Soybeans.

The term *soybeans* means all varieties of Glycine max or Glycine soja.

§ 1220.129 State and United States.

The terms *State* and *United States* include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1220.130 Unit.

The term *unit* shall mean each State, or group of States, which is represented on the Board.

UNITED SOYBEAN BOARD

§ 1220.201 Membership of board.

(a) For the purposes of nominating and appointing producers to the Board, the United States shall be divided into 30 geographic units and the number of Board members from each unit, subject to paragraphs (d) and (e) of this section shall be as follows:

Unit	Number of members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Missouri	3
Ohio	3
Arkansas	3
Nebraska	3
South Dakota	3
Kansas	3
Mississippi	2
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
Michigan	2
North Dakota	2
Wisconsin	2
Maryland	1
Virginia	1
Georgia	1
South Carolina	1
Alabama	1
Delaware	1
Texas	1
Pennsylvania	1
Oklahoma	1
New Jersey	1
Eastern Region (New York, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico	1
Western Region (Montana, Wy-oming, Colorado, New Mexico, Idaho, Utah, Arizona, Wash-ington, Oregon, Nevada, California, Hawaii, and Alaska)	1

(b) The Board shall be composed of soybean producers appointed by the Secretary from nominations submitted pursuant to § 1220.203. A soybean producer may only be nominated by the unit in which that soybean producer is a resident or producer.

(c) At the end of each three (3) year period, the Board shall review the geographic distribution of soybean production volume throughout the United States and may recommend to the Secretary a modification of paragraph (e) of this section, to best reflect the geographic distribution of soybean production volume in the United States. The Secretary may amend this subpart to make the changes recommended by the Board in levels of productions used to determine per unit representation. A unit may not, as a result of any modifications under this subsection, lose Board seats to which it is entitled at the time this subpart is initially issued unless its average annual production, as determined under paragraph (e)(6) of this section, declines below the levels required for representation, as specified in paragraphs (e) (1) through (5) of this section.

(d) At the end of each three (3) year period, the Secretary shall review the volume of production (minus the volume of production for which refunds have been paid) of each unit provided representation under paragraph (a) of this section, and shall adjust the boundaries of any unit and the number of Board members from each such unit to conform with the criteria set out in paragraphs (e) (1) through (5) of this section.

(e) The following formula will be used to determine the number of directors for each unit who shall serve on the Board:

(1)(i) Except as provided in paragraph (e)(1)(ii) of this section, each State will be considered as a separate unit.

(ii) States which do not have annual average soybean production equal to or greater than three million (3,000,000) bushels shall be grouped, to the extent practicable, into geographically contiguous units each of which, to the extent practicable, have a combined annual soybean production level which is equal to or greater than three million (3,000,000) bushels and each such unit shall be entitled to at least one representative on the Board.

(2) Each unit that has an annual average soybean production of less than fifteen million (15,000,000) bushels shall be entitled to one representative on the Board.

(3) Each unit which has an annual average soybean production of fifteen million (15,000,000) or more bushels but less than seventy million (70,000,000) bushels shall be entitled to two (2) representatives on the Board.

(4) Each unit which has an annual average soybean production of seventy million (70,000,000) or more bushels but less than two hundred million (200,000,000) bushels shall be entitled to three (3) representatives on the Board.

(5) Each unit which has an annual average soybean production of two hundred million (200,000,000) bushels or more shall be entitled to four (4) representatives on the Board.

(6) For the purposes of this section, average annual soybean production shall be determined by using the average of the production for the State or unit over the five previous years, excluding the year in which production was the highest and the year in which production was the lowest.

(f) [Reserved]

[56 FR 31049, July 9, 1991, as amended at 60 FR 29962, June 7, 1995; 60 FR 58500, Nov. 28, 1995; 62 FR 37489, July 14, 1997; 62 FR 41485, Aug. 1, 1997; 65 FR 63768, Oct. 25, 2000]

§ 1220.202 Term of office.

(a) The members of the Board shall serve for terms of 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years.

(b) Each member shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

(c) No member shall serve more than three consecutive 3-year terms in such capacity.

§ 1220.203 Nominations.

All nominations for appointments to the Board under § 1220.204 shall be made in the following manner:

(a) After the issuance of this subpart by the Secretary, nominations shall be obtained by the Secretary as specified in paragraphs (a), (b), and (c) of this section from Qualified State Soybean Boards or for initial Board nominations, eligible organizations deemed qualified to nominate pursuant to paragraph (f) of the section. A Qualified State Soybean Board, or for initial Board nominations, an eligible organization shall only submit nominations for positions on the Board representing the unit, as established under § 1220.201, in which such Qualified State Soybean Board operates.

(b) If the Secretary determines that a unit is not represented by a Qualified State Soybean Board or for initial Board nominations, an eligible organization, then the Secretary may solicit nominations from organizations which represent producers in that unit and from producers residing in that unit. A caucus may be held in such units for the purpose of collectively submitting nominations to the Secretary.

(c) Where there is more than one State comprising a unit, the Secretary shall take into consideration the nominations submitted by Qualified State Soybean Boards or for initial Board nominations, eligible organizations, within the unit. A caucus may be held in such units for the purpose of collectively submitting nominations to the Secretary. The Secretary shall consider the proportional levels of production in each State comprising the unit when appointing members to the Board representing that unit.

(d) At least two nominations shall be submitted for each position to be filled.

(e) Nominations may be submitted in order of preference and for the initial

Board, in order of preference for staggered terms. Should the Secretary reject any nomination submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraph (a) or (b) of this section, whichever provision is applicable for such unit.

(f) Any organization authorized pursuant to State law to collect assessments from producers may notify the Secretary of the organization's intent to nominate members to the initial Board for the State or unit, as established under § 1220.201, in which such organization operates and is authorized by State law. Such eligibility shall be based only upon the criteria established pursuant to § 1220.228(a)(1). There shall only be one organization authorized per State pursuant to this section to submit nominations to the initial Board. If no such entity exists in a State, any organization meeting those requirements of § 1220.228(a)(2) may request eligibility to submit nominations.

§ 1220.204 Appointment.

From the nominations made pursuant to § 1220.203, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1220.201.

§ 1220.205 Nominee's agreement to serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Agree to disclose any relationship with any soybean promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1220.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request nominations for a successor pursuant to § 1220.203, and such successor shall be appointed pursuant to § 1220.204.

§ 1220.207 Alternate members.

(a) The Secretary shall solicit, pursuant to the procedures of § 1220.203, nominations for alternate members of the Board.

(b) The Secretary shall appoint one alternate member of the Board for each unit which has only one member pursuant to § 1220.204 and § 1220.205.

(c) Alternate members of the Board may attend meetings of the Board as a voting member upon the following circumstances:

(1) A member of the Board for the unit which the alternate member represents is absent; and

(2) Such member, or in the case of incapacitation or death of the member, a relative, has contacted the appropriate officer of the Board to inform such officer of such absence;

(d) An alternate member of the Board, when attending Board meetings in an official capacity, shall have the rights, duties and obligations of a Board member.

§ 1220.208 Removal.

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed or certified under this part or any employee of the Board or Committee may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1220.209 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b)(1) Except for roll call votes, each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by a simple majority of those voting.

(2)(i) If a member requests a roll call vote, except as provided in paragraph (b)(2)(ii) of this section, each unit as established under § 1220.201, shall cast one vote for each percent, or portion of a percent, of the average total amount of assessments remitted to the Board

that was remitted from the unit (minus refunds) during each of the three previous fiscal years of the Board under § 1220.223.

(ii)(A) During the first fiscal year of the Board, the percentage used to determine the votes given to a unit will be based on annual average soybean production of the three previous years. If a unit is represented by more than one member, each member representing the unit shall receive an equal percentage of the votes allocated to the unit.

(B) During the second and third year this subpart is in effect, the percentage used to determine the votes given to a unit will be based upon averaging the unit's percentage of annual assessments remitted to the Board (minus refunds).

(iii) Should a member representing a unit not be present, then the other members representing such unit shall vote, on an equal basis if there is more than one member representing the unit present, the number of votes which the absent member would have been entitled to vote.

(iv) A motion will carry on a roll call vote if approved by both a simple majority of all votes cast and a simple majority of all units voting (with the vote of each unit determined by a simple majority of all votes cast by members in that unit).

(3) A member may not cast votes by proxy.

(c) In lieu of a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes of a majority of its members, or if a roll call vote is requested, a simple majority of all votes cast and a simple majority of all units voting by mail, telephone, facsimile, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a regular or special meeting of the Board.

(d) On or after the end of the three-year period beginning on the effective date of this subpart, the Board may recommend to the Secretary changes in the voting procedures of the Board described in paragraph (b) of this section.

§ 1220.210 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.211 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To make rules to effectuate the terms and provisions of this subpart;

(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(e) To disseminate information to producers or producer organizations through programs or by direct contact utilizing the public postage system or other systems;

(f) To assign responsibilities relating to budget and program development to the Committee as provided in § 1220.219.

(g) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable;

(h) To contract with Qualified State Soybean Boards to implement plans or projects;

(i) To recommend to the Secretary amendments to this subpart; and

(j) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1220.223 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing

account or certificate of deposit of a bank which is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1220.212 Duties.

The Board shall have the following duties:

(a) To meet not less than three times annually, or more often if required for the Board to carry out its responsibilities pursuant to this subpart.

(b) To organize and select from among its members a chairperson, vice chairperson, a treasurer and such other officers as may be necessary.

(c) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board.

(d) To employ or contract for such persons to perform administrative functions as it may deem necessary and define the duties and determine the compensation of each.

(e) To develop and submit to the Secretary for approval, promotion, research, consumer information, and industry information plans or projects.

(f) To prepare, and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of promotion, research, consumer information, and industry information plans or projects, and also including a description of the proposed promotion, research, consumer information, and industry information programs contemplated therein.

(g) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it.

(h) With the approval of the Secretary, to enter into contracts or agreements with appropriate parties, including national nonprofit producer-governed organizations, for the development and conduct of activities authorized under § 1220.230 of this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1220.223. Provided, that the Board shall contract with only one national nonprofit producer-governed organization to administer all projects within a program area.

Any such contract or agreement shall provide that:

(1) The contractor shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective only upon approval of the Secretary; and

(3) The contracting party shall keep complete and accurate records of all of its transactions and make periodic reports to the Board of activities conducted pursuant to a contract and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Board and Secretary may audit the records of the contracting party periodically.

(i) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended.

(j) [Reserved]

(k) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may require and to submit a copy of each such audit to the Secretary.

(l) To give the Secretary the same notice of meetings of the Board and committees as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings.

(m) To submit to the Secretary such information pursuant to this subpart as may be requested.

(n) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses

for soybean and soybean products produced in the United States.

[56 FR 31049, July 9, 1991, as amended at 60 FR 29962, June 7, 1995; 60 FR 58500, Nov. 28, 1995]

SOYBEAN PROGRAM COORDINATING COMMITTEE

§ 1220.213 Establishment and membership.

(a) The Board may establish, with the approval of the Secretary, a Soybean Program Coordinating Committee to assist in the administration of this subpart. The Committee shall consist of 15 members. The Committee shall be composed of 10 Board members elected by the Board and 5 producers elected by the Cooperator Organization.

(b) Board representation on the Committee shall consist of the Chairperson and Treasurer of the Board, and eight additional members duly elected by the Board to serve on the Committee. The eight representatives to the Committee elected by the Board shall, to the extent practicable, reflect the geographic and unit distribution of soybean production.

(c) Cooperator Organization representation on the Committee shall consist of five members elected by the Cooperator Organization Board of Directors. The Cooperator Organization shall submit to the Secretary the names of the representatives elected by the Cooperator Organization to serve on the Committee, the manner in which such election was held, and verify that such representatives are producers. The prospective Cooperator Organization representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any soybean entity or with any organization that has or is being considered for a contractual relationship with the Board. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1220.214 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1220.215 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Cooperator Organization, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to appoint representatives pursuant to § 1220.213 above.

§ 1220.216 Procedure.

(a) Attendance of at least 12 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds (⅔) of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than twelve of its members by mail, telephone, facsimile, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

(c) A member may not cast votes by proxy.

§ 1220.217 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed by the Board for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.218 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The Chairperson of the Board shall be Chairperson of the Committee.

(b) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1220.219 Powers of the Committee.

If established by the Board, the Committee may have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of soybeans and soybean products as well as plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Board regarding such proposals; and

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable.

§ 1220.220 Duties of the Committee.

If established by the Board, the Committee may have the following duties:

(a) To meet and to organize;

(b) To prepare and submit to the Board for approval, budgets on a fiscal period basis of proposed costs of promotion, research, consumer information, and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information, and industry information programs contemplated therein;

(c) To give the Secretary the same notice of meetings of the Committee and its subcommittees as is given to members in order that the Secretary, or the Secretary's representative, may attend such meetings;

(d) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(e) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products.

EXPENSES AND ASSESSMENTS

§ 1220.222 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. However, during any fiscal year, expenses incurred by the Board for administrative staff costs and their benefits shall not exceed 1 percent of the projected level of assessments, net of projected refunds, of the Board for that fiscal year. Such expenses shall be paid from assessments received pursuant to § 1220.223. The administrative expenses of the Board, including the cost of administrative staff, shall not exceed 5 percent of the projected level of assessments, net of projected refunds, of the Board for that fiscal year.

(b) The Board shall reimburse the Secretary, from assessments received pursuant to § 1220.223, for administrative costs incurred after an Order has been submitted to the Department pursuant to section 1968(b) of the Act; Provided, that the Board shall only be required to reimburse the Secretary for one-half (50%) of the costs incurred by the Secretary to conduct the refund referendum relating to continuation of authority to pay refunds.

(c)(1) The Board may, with the approval of the Secretary, authorize a credit to Qualified State Soybean Boards of up to 5 percent of the amount to be remitted to the Board pursuant to § 1220.223 and § 1220.228 of this subpart to offset collection and compliance costs relating to such assessments and for fees paid to State governmental agencies or first purchasers for collection of the assessments where the payment of such fees by the Qualified State Soybean Board is required by State law enacted prior to November 28, 1990.

(2) The portion of the credit authorized in paragraph (c)(1) of this section which compensates Qualified State Soybean Boards for fees paid to State governmental agencies or first purchasers for collection of the assessments where the payment of such fees by the Qualified State Soybean Board is required by State law enacted prior to November 28, 1990:

(i) Shall not exceed one-half of such fees paid to State governmental agencies or first purchasers, and;

(ii) Shall not exceed 2.5 percent of the amount of assessments collected and remitted to the Board.

(3) Except for that portion of the credit issued pursuant to paragraph (c)(2) of this section, credits authorized by paragraph (c)(1) of this section will be included as part of the Board's administrative expenses.

§ 1220.223 Assessments.

(a)(1) Except as prescribed by regulations approved by the Secretary or as otherwise provided in this section, each first purchaser of soybeans shall collect an assessment from the producer, and each producer shall pay such assessment to the first purchaser, at the rate of one-half of one percent (0.5%) of the net market price of the soybeans purchased. Each first purchaser shall remit such assessment to the Board or to a Qualified State Soybean Board, as provided in paragraph (a)(5) of this section.

(2) Any producer marketing processed soybeans or soybean products of that producer's own production, shall remit to a Qualified State Soybean Board or to the Board, as provided in paragraph (a)(5) of this section, an assessment on such soybeans or soybean products at a rate of one-half of one percent (0.5%) of the net market price of the soybeans involved or the equivalent thereof.

(3) In determining the assessment due from each producer under paragraph (a)(1) or (a)(2) of this section, a producer who is contributing to a Qualified State Soybean Board shall receive a credit from the Board for contributions to such Qualified State Soybean Board on any soybeans assessed under this section in an amount not to exceed one-quarter of one percent of the net market price of the soybeans assessed.

(4) In order for a producer to receive the credit provided for in paragraph (a)(3) of this section, the Qualified State Soybean Board or the first purchaser must establish to the satisfaction of the Board that the producer has contributed to a Qualified State Soybean Board.

(5)(i) If the soybeans, for which an assessment is paid, were grown in a State other than the State which is the situs of the first purchaser, the first purchaser that collects the assessment shall remit the assessment and information as to the State of origin of the soybeans to the Qualified State Soybean Board operating in the State in which the first purchaser is located. The Qualified State Soybean Board operating in the State in which the first purchaser is located shall remit such assessments to the Qualified State Soybean Board operating in the State in which the soybeans were grown. If no such Qualified State Soybean Board exists in such State, then the assessments shall be remitted to the Board. The Board, with the approval of the Secretary, may authorize Qualified State Soybean Boards to propose modifications to the foregoing ''State of Origin'' rule to ensure effective coordination of assessment collections between Qualified State Soybean Boards.

(ii)(A) If a producer pledges soybeans grown by that producer as collateral for a loan issued by the Commodity Credit Corporation and if that producer forfeits said soybeans in lieu of loan repayment, the Commodity Credit Corporation shall at the time of the loan settlement, collect from the producer the assessments due based on 0.5 percent of the principal loan amount received by the producer and remit the assessment to the Qualified State Soybean Board in the State in which the soybeans were pledged, or if no Qualified State Soybean Board exists in such State, the Board.

(B) If a producer redeems and subsequently markets soybeans which have been pledged as collateral for a loan issued by the Commodity Credit Corporation, the first purchaser shall collect and remit the assessments due pursuant to paragraph (a)(1) of this section; or if a producer markets such soybeans as processed soybeans or as soybean products, the producer shall remit the assessment pursuant to paragraph (a)(2) of this section.

(iii) Qualified State Soybean Boards and the Board shall coordinate assessment collection procedures to ensure that producers marketing soybeans are required to pay only one assessment per bushel of soybeans and collections are adjusted among States on a mutually agreeable basis.

(b) The collection of assessments pursuant to paragraph (a) of this section, shall commence on and after the date assessments are required to be paid and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board, and to hold such assessments until the Board is constituted, then remit such assessments to the Board.

(c)(1) Each person responsible for the collection of assessments under paragraph (a) of this section, shall collect and remit the assessments to the Board or a Qualified State Soybean Board on a monthly basis or as required by State law, but no less than quarterly, unless the Board, with the approval of the Secretary, has specifically authorized otherwise.

(2) Any unpaid assessments due the Board or a Qualified State Soybean Board from a person responsible for remitting assessments to the Board or a Qualified State Soybean Board pursuant to paragraph (a) of this section, shall be increased two percent (2%) each month beginning with the day following the date such assessments were due under this subpart. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(3) The amounts payable pursuant to this section shall be computed monthly on unpaid assessments and shall include any unpaid late charges previously applied pursuant to this section.

(4) For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board or a Qualified State Soybean Board when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(d) Prior to the continuance referendum, the Board, pursuant to procedures approved by the Secretary, shall ensure that each Qualified State Soybean Board is provided credit in accordance with the provisions of section 1969(n)(1) and subject to section 1969(n)(3) of the Act.

(e) Following the continuance referendum, the Board, pursuant to procedures approved by the Secretary, shall ensure annually that each Qualified State Soybean Board is provided credit in accordance with the provisions of section 1969(n)(2) and subject to section 1969(n)(3) of the Act.

[56 FR 31049, July 9, 1991, as amended at 56 FR 42923, Aug. 30, 1991; 57 FR 31096, July 14, 1992]

§§ 1220.224–1220.227 [Reserved]

§ 1220.228 Qualified State Soybean Boards.

(a)(1) Any soybean promotion entity that is authorized by State statute to collect assessments required by State law from soybean producers may notify the Board of its election to be the Qualified State Soybean Board for the State in which it operates so that producers may receive credit pursuant to § 1220.223(a)(3) for contributions to such organization. Only one such entity may make such election or be qualified pursuant to paragraph (a)(2) of this section. Such entity, upon making such election, agrees to the following:

(i) To conduct activities as defined in § 1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(ii) Provide a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(iii) Collect assessments paid on soybeans marketed within the State and establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(iv) Remit to the Board each assessment paid and remitted to it, minus authorized credits issued pursuant to § 1220.222(c) and credits issued to producers pursuant to § 1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted to it unless the Board determines a different date for remittance of assessments;

(v)–(vi) [Reserved]

(vii) Furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(viii) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(ix)(A) Except as otherwise provided in paragraph (a)(1)(ix)(B) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(B) The prohibition in paragraph (a)(1)(ix)(A) of this section, shall not apply to—

(*1*) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under the Order;

(*2*) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof; or

(*3*) The development and recommendation of amendments to this subpart.

(2) If no entity elects to serve as a Qualified State Soybean Board within a State pursuant to paragraph (a)(1) of this section, any State soybean promotion entity that is organized and operating within a State, and receives assessments or contributions from producers and conducts soybean or soybean product promotion, research, consumer information, or industry information programs, may apply for certification as the Qualified State Soybean Board for such State so that producers may receive credit pursuant to § 1220.223(a)(3) for contributions to such organizations. All provisions of this subpart applicable to Qualified State Soybean Boards will be applicable to such entity. The Board shall review such applications for certification and shall make a determination as to the certification of each applicant.

(b) In order for the State soybean entity to be certified by the Board pursuant to paragraph (a)(2) of this section, as a Qualified State Soybean Board, the entity must:

(1) Conduct activities as defined in § 1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such State entity will collect assessments paid on soybeans marketed within the State and establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization will remit to the Board each assessment paid and remitted to it, minus credits issued pursuant to § 1220.222(c) and authorized credits issued to producers pursuant to § 1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted to it unless the Board determines a different date for remittance of assessments;

(5)–(6) [Reserved]

(7) Certify to the Board that it will furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(8) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(9)(i) Except as otherwise provided in paragraph (b)(9)(ii) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(ii) The prohibition in paragraph (b)(9)(i) of this section, shall not apply to—

(A) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under this subpart;

(B) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof; or

(C) The development and recommendation of amendments to this subpart.

(c) Notwithstanding any other provisions of this subpart, and provided that activities of a Qualified State Soybean Board are authorized under the Act and this subpart, the Board shall not have the authority to:

(1) Establish guidelines, regulations, or rules which would restrict or infringe upon a Qualified State Soybean Board's authority to determine administrative or program expenditure allocations or administrative or program implementation; and

(2) Direct Qualified State Soybean Boards to participate or not participate in program activities or implementation.

(d) The Board shall establish procedures, after an opportunity for public comment and subject to approval of the Secretary, which provide Qualified State Soybean Boards with a right to present information to the Board prior to any determinations relating to nonparticipation as a Qualified State Soybean Board following initial election or determination as a Qualified State Soybean Board.

[56 FR 31049, July 9, 1991, as amended at 60 FR 58500, Nov. 28, 1995; 61 FR 50694, Sept. 27, 1996]

§ 1220.229 Influencing governmental action.

(a) Except as otherwise provided in paragraph (b) of this section, funds collected or received by the Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(b) The prohibition in paragraph (a) of this section shall not apply to—

(1) The development and recommendation of amendments to this subpart;

(2) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under this subpart; or

(3) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof.

§ 1220.230 Promotion, research, consumer information, and industry information.

(a) The Board shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans or projects authorized in this subpart. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate promotion, research, consumer information, and industry information activities with respect to soybean and soybean products;

(2) The establishment and conduct of research, and studies with respect to the sale, distribution, marketing and utilization of soybean and soybean products and the creation of new products thereof, to the end that marketing and utilization of soybean and soybean products may be encouraged, expanded, improved or made more acceptable; and

(3) Such other activities as are authorized by the Act and this subpart.

(b) Each plan or project described in paragraph (a) of this section, shall be periodically reviewed or evaluated by the Board to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information, and industry information. If it is found by the Board that any such plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project.

(c) No such plans or projects shall make use of unfair or deceptive acts or practices with respect to the quality,

value or use of any competing product. In carrying out any plan or project funded by the Board described in paragraph (a) of this section, no preference shall be given to a brand or trade name of any soybean product without the approval of the Board and the Secretary.

REPORTS, BOOKS, AND RECORDS

§ 1220.241 Reports.

Each producer marketing processed soybeans or soybean products of that producer's own production and each first purchaser responsible for the collection of assessments under § 1220.223 shall be required to report to the Board periodically such information as may be required by the regulations recommended by the Board and approved by the Secretary. Such information may include but not be limited to the following:

(a) The number of bushels of soybeans purchased, initially transferred, or which, in any other manner, is subject to the collection of assessment;

(b) The amount of assessments remitted;

(c) The basis, if necessary, to show why the remittance is less than one-half percent (0.5%) of the net market price per bushel of soybeans purchased multiplied by the number of bushels purchased; and

(d) The date any assessment was paid.

§ 1220.242 Books and records.

(a) Except as provided in paragraph (b) of this section, each person who is subject to this subpart shall maintain and make available for inspection by the Board or Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued under this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

(b) Any producer who plants less than 25 acres of soybeans annually and does not market such soybeans shall not be required to maintain books or records pursuant to this subpart.

§ 1220.243 Confidential treatment.

Except as otherwise provided in the Act, financial or commercial information that is obtained under the Act and this subpart and that is privileged and confidential shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members or any other producers. Only those persons having a specific need for such information in order to effectively administer the provisions of this part shall have access to such information.

MISCELLANEOUS

§ 1220.251 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property, owned, in the possession of or under the control of the Board, including any unpaid claims or property not delivered or any other claims existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1220.212(h);

(3) From time to time account for all receipts and disbursements; and

(4) Deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct, and upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information plans or projects authorized pursuant to this subpart.

§ 1220.252 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1220.253 Personal liability.

No member, employee or agent of the Board, including employees, agents or board members of Qualified State Soybean Boards, acting pursuant to authority provided in this subpart, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission, of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1220.254 Patents, copyrights, inventions, and publications.

(a) Any patents, copyrights, inventions, or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1220.251 shall apply to determine disposition of all such property.

(b) Notwithstanding the provisions of paragraph (a) of this section, if patents, copyrights, inventions, or publications are developed by the use of funds remitted to the Board under this subpart. Should patents, copyrights, inventions or publications be developed through the use of funds remitted to the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication.

§ 1220.255 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by any Qualified State Soybean Board recognized, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1220.256 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1220.257 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act, Public Law 96–511, is OMB number 0581–0093, except Board member nominee information sheets are assigned OMB number 0505–0001.

[56 FR 31049, July 9, 1991, as amended at 61 FR 50694, Sept. 27, 1996]

Subpart B—Rules and Regulations

SOURCE: 57 FR 29439, July 2, 1992, unless otherwise noted.

DEFINITIONS

§ 1220.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms as appears in subpart A of this part.

ASSESSMENTS

§ 1220.310 Assessments.

(a) A 0.5 percent of the net market price per bushel assessment on soybeans marketed shall be paid by the producer of the soybeans in the manner designated in § 1220.311.

(b) If more than one producer shares the proceeds received for the soybeans marketed, each such producer is obligated to pay that portion of the assessments which is equivalent to each producer's proportionate share of the proceeds.

(c) Failure of the first purchaser to collect the assessment on each bushel of soybeans marketed as designated in § 1220.311 shall not relieve the producer of the producer's obligation to pay the assessment to the appropriate Qualified State Soybean Board or the United Soybean Board as required in § 1220.312.

§ 1220.311 Collection and remittance of assessments.

(a) Except as otherwise provided in this section, each first purchaser making payment to a producer for soybeans marketed by a producer shall collect from that producer at the time of settlement of that producer's account an assessment at the rate of 0.5 percent of the net market price per bushel of soybeans marketed and shall be responsible for remitting the assessment to the Qualified State Soybean Board or the United Soybean Board as provided in § 1220.312. The first purchaser shall give to the producer a receipt indicating payment of the assessment. The receipt shall be any document issued by the first purchaser that contains the information requested in § 1220.314(a).

(b) A first purchaser who purchases soybeans pursuant to a contract with a producer, either on a volume basis or on a per acre basis, shall be responsible for remitting the assessment due on soybeans purchased as required in § 1220.312. Such assessment shall be based upon 0.5 percent of the net market price specified or established in the contract and shall be collected at the time of payment to the producer. If the net market price is not specified or established in the contract the assessment shall be based on fair market value as specified in paragraph (c) of this section below.

(c) Any producer marketing processed soybeans or soybean products of that producer's own production either directly or through retail or wholesale outlets shall be responsible for remitting to the Qualified State Soybean Board or the United Soybean Board pursuant to § 1220.312, an assessment on the number of bushels of soybeans processed or manufactured into soybean products at the rate 0.5 percent of the net market price of the soybeans involved or the equivalent thereof. The assessment shall attach upon date of sale of the processed soybeans or soybean products and shall be based upon the posted county price for soybeans on the date of the sale as posted at the local ASCS office for the county in which the soybeans are grown. The producer shall remit the assessment in the manner provided in § 1220.312.

(d) Any producer marketing processed soybeans or soybean products of that producer's own production shall be responsible for remitting to the Qualified State Soybean Board or the United Soybean Board pursuant to § 1220.312, an assessment on the number of bushels of soybeans processed or manufactured into soybean products at the rate of 0.5 percent of the net market price of the soybeans involved or the equivalent thereof. The assessment shall attach upon the date of final settlement for such processed soybeans or soybean products and shall be based upon the posted county price for soybeans on the date of final settlement as posted at the local ASCS office for the county in which the soybeans are

grown. The producer shall remit the assessment in the manner provided in § 1220.312.

(e) A producer delivering soybeans of the producer's own production against a soybean futures contract shall be responsible for remitting an assessment at the rate of 0.5 percent of net market price as specified in settlement documents. The assessment shall attach at the time of delivery and the producer shall remit the assessment due in accordance with § 1220.312.

(f) A producer who forfeits soybeans of that producer's own production which were pledged as collateral on a loan issued by Commodity Credit Corporation shall pay an assessment. The assessment shall attach upon the date the settlement statement is prepared and issued to the producer by the Commodity Credit Corporation and shall be 0.5 percent of the principal amount of the loan for the soybeans as specified by Commodity Credit Corporation in the settlement statement. The Commodity Credit Corporation shall collect the assessment and then remit the assessment due in accordance with § 1220.312.

§ 1220.312 Remittance of assessments and submission of reports to United Soybean Board or Qualified State Soybean Board.

(a) Each first purchaser and each producer responsible for the remittance of assessments shall remit assessments and submit a report of assessments to the Qualified State Soybean Board in the State in which each first purchaser or each producer responsible for the remittance of assessments is located or if there is no Qualified State Soybean Board in such State, then to the United Soybean Board as provided in this section.

(b) First purchasers and producers responsible for remitting assessments shall remit assessments and reports on a monthly or quarterly basis depending on the State or region in which the first purchasers or producers are located. The reporting period for each State and region shall be as follows:

Monthly	Quarterly
Arkansas	Alabama
Delaware	Florida
Iowa	Georgia
Kansas	Illinois
Kentucky	Indiana
Louisiana	Maryland
Michigan	North Dakota
Minnesota	Nebraska
Missouri	New Jersey
Mississippi	Ohio
North Carolina	Oklahoma
South Carolina	Pennsylvania
Tennessee	South Dakota
Texas	Virginia
Wisconsin	
Eastern Region	
Western Region	

(c) *Reports*. Each first purchaser or producer responsible for remitting assessments shall make reports on forms made available by the United Soybean Board or on Qualified State Soybean Board forms which contain the information required in § 1220.241 and are approved by the Board. A first purchaser with multiple facilities or purchasing locations within a State shall have the option to submit a single, consolidated report specifying the combined volume of soybeans purchased or the net market value of all soybeans purchased from the producers in the State. Reports shall be submitted with assessments due in accordance with the provisions of paragraph (d) of this section.

(d) *Remittances*. Each first purchaser or producer responsible for remitting assessments shall remit all assessments to the Qualified State Soybean Board, its designee, or the United Soybean Board. All assessments shall be remitted in the form of a check or money order payable to the order of the applicable Qualified State Soybean Board or the United Soybean Board and shall be sent to the designated address not later than the last day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed and shall be accompanied by the reports required by paragraph (c) of this section. All remittances shall be received subject to collection and payment at par.

(e) *Receipt of Reports and Remittances*. The timeliness of receipt of reports and assessments by the Board or Qualified State Soybean Board shall be based on the applicable postmark date or the date actually received by the Board or

the Qualified State Soybean Board whichever is earlier.

[57 FR 29439, July 2, 1992, as amended at 58 FR 40732, July 30, 1993; 60 FR 58500, Nov. 28, 1995]

§ 1220.313 Qualified State Soybean Boards.

The following State soybean promotion organizations shall be Qualified State Soybean Boards. First purchasers and producers responsible for remitting assessments located in States which have a Qualified State Soybean Board shall remit assessments accompanied by the required reports to the Qualified State Soybean Board in the State in which the first purchaser or producer responsible for remitting assessments is located.

(1) Alabama Soybean Producers Board
(2) Arkansas Soybean Promotion Board
(3) Delaware Soybean Board
(4) Florida Soybean Advisory Council
(5) Georgia Agricultural Commodity Commission for Soybeans
(6) Illinois Soybean Program Operating Board
(7) Iowa Soybean Promotion Board
(8) Indiana Soybean Development Council, Inc.
(9) Kansas Soybean Commission
(10) Kentucky Soybean Promotion Board
(11) Louisiana Soybean Promotion Board
(12) Maryland Soybean Board
(13) Soybean promotion Committee of Michigan
(14) Minnesota Soybean Research and Promotion Council
(15) Mississippi Soybean Promotion Board
(16) Missouri Soybean Merchandising Council
(17) Nebraska Soybean Development, Utilization, and Marketing Board
(18) New Jersey Soybean Board
(19) North Carolina Soybean Producers Association
(20) North Dakota Soybean Council
(21) Ohio Soybean Council Board of Trustees
(22) Oklahoma Soybean Commission
(23) Pennsylvania Soybean Board
(24) South Carolina Soybean BoardI25(25) South Dakota Soybean Research and Promotion Council
(26) Tennessee Soybean Promotion Board
(27) Texas Soybean Producers Board
(28) Virginia Soybean Board
(29) Wisconsin Soybean Marketing Board, Inc.

§ 1220.314 Document evidencing payment of assessments.

(a) Each first purchaser responsible for remitting an assessment to a Qualified State Soybean Board or the United Soybean Board is required to give to the producer from whom the first purchaser collected an assessment written evidence of payment of the assessment containing the following information:

(1) Name and address of the first purchaser.

(2) Name of producer who paid assessment.

(3) Number of bushels sold.

(4) Net market price.

(5) Total assessments paid by the producer.

(6) Date.

(7) State in which soybeans were grown.

(b) [Reserved]

§§ 1220.330–1220.332 [Reserved]

Subparts C–E [Reserved]

Subpart F—Procedures To Request a Referendum

SOURCE: 64 FR 45416, Aug. 20, 1999; 65 FR 1, Jan. 3, 2000, unless otherwise noted.

DEFINITIONS

§ 1220.600 Act.

The term *Act* means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), and any amendments thereto.

§ 1220.601 Administrator, AMS.

The term *Administrator, AMS,* means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.602 Administrator, FSA.

The term *Administrator, FSA,* means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.603 Department.

The term *Department* means the United States Department of Agriculture.

§ 1220.604 Farm Service Agency.

The term *Farm Service Agency*, also referred to as ''FSA,'' means the Farm Service Agency of the Department.

§ 1220.605 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee*, also referred to as ''FSA County Committee or COC,'' means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

§ 1220.606 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director*, also referred to as ''CED,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1220.607 Order.

The term *Order* means the Soybean Promotion and Research Order.

§ 1220.608 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.609 Producer.

The term *Producer* means any person engaged in the growing of soybeans in the United States, who owns or shares the ownership and risk of loss of such soybeans.

§ 1220.610 Public notice.

The term *Public Notice* means a notice published in the FEDERAL REGISTER, not later than 60 days prior to the last day of the Request for Referendum period that provides information regarding the Request for Referendum period. Such notification shall include, but not be limited to, explanation of producers' rights; procedures to request a referendum, the purpose, dates of the Request for Referendum period, location for conducting the Request for Referendum, and eligibility requirements. Additionally, the Board is required to provide producers, in writing, this same information during that same time period. Other pertinent information shall also be provided, without advertising expense, through press releases by State and county FSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletter, and the like.

§ 1220.611 Representative period.

The term *Representative period* means the period designated by the Secretary pursuant to Section 1970 of the Act.

§ 1220.612 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States Department of Agriculture or any other officer or employee of the Department to whom there has been delegated or to whom there may be delegated the authority to act in the Secretary's stead.

§ 1220.613 Soybeans.

The term *Soybeans* means all varieties of glycine max or glycine soja.

§ 1220.614 State and United States.

The terms *State* and *United States* include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

PROCEDURES

§ 1220.615 General.

An opportunity to request a referendum shall be provided to U.S. soybean producers to determine whether eligible producers favor the conduct of a referendum and the Request for Referendum shall be carried out in accordance with this subpart.

(a) The opportunity to request a referendum shall be provided at the county FSA offices.

(b) If the Secretary determines, based on results of the Request for Referendum, that no less than 10 percent (not in excess of one-fifth of which may be producers in any one State) of all

producers have requested a referendum on the Order, a referendum would be held within 1 year of that determination.

(c) If the Secretary determines, based on the results of the Request for Referendum, that the requirements in paragraph (b) of this section were not met, a referendum would not be conducted.

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States is determined to be 600,813.

§ 1220.616 Supervision of the process for requesting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting producers to request a referendum in accordance with this subpart.

§ 1220.617 Eligibility.

(a) *Eligible producers.* Each person who was a producer during the representative period is provided the opportunity to request a referendum. Each producer entity is entitled to only one request.

(b) *Proxy registration.* Proxy registration is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may request a referendum on behalf of that entity. Any individual who requests a referendum on behalf of any producer entity, shall certify that he/she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to make only one request for a referendum; provided, however, that any individual member of a group who is an eligible producer separate from the group may request a referendum separately.

§ 1220.618 Time and place for requesting a referendum.

The opportunity to request a referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to request a referendum by following the procedures in § 1220.621 during the normal business hours of each county FSA office.

§ 1220.619 Facilities

Each county FSA office shall provide adequate facilities and space to permit producers to complete Form LS–51–1.

§ 1220.620 Certification and request form.

Form LS–51–1 shall be used to request a referendum and certify producer eligibility. The form does not require a ''yes'' or ''no.'' Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously registers, certifies eligibility and requests that a referendum be conducted.

§ 1220.621 Certification and request procedure.

(a) To request that a referendum be conducted, each eligible producer shall, during the Request for Referendum period, be provided the opportunity to request a referendum during a specified period announced by the Secretary, at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Each eligible producer shall be required to complete Form LS–51–1 in its entirety and sign it. The producer must legibly print his/her name and, if applicable, the producer entity represented, address, county, and telephone number. The producer must read the certification statement on Form LS–51–1 and sign it certifying that he/she or the

producer entity represented was a producer of soybeans during the representative period and is requesting a referendum. Only a completed and signed Form LS–51–1 shall be considered a valid request for a referendum.

(b) To request a referendum eligible producers may obtain Form LS–51–1 in person, by mail, or by facsimile during the Request for Referendum period from the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Producers or producer entities may return Form LS–51–1 in person, by mail, or facsimile. Form's LS–51–1 returned in person or by facsimile, must be received in the appropriate county FSA office no later than the last business day of the Request for Referendum period to be considered a valid request. However, Form's LS–51–1 mailed to the county FSA office must be postmarked no later than the last business day of the Request for Referendum period and be received in the county FSA office no later than 10 business days after the last business day of the Request for Referendum period to be considered a valid request for a referendum.

(c) Eligible participants who obtain form LS–51–1 in person at the appropriate county office may complete, and return by hand the form the same day.

§ 1220.622 List of producers requesting a referendum.

(a) The county FSA personnel shall enter on the ''List of Soybean Producers Requesting a Referendum'' form (Form LS–51–2), the following information for each returned Form LS–51–1: name of individual soybean producer or other producer entity, name of producer entity representative, if applicable, postmarked date of a mailed Form LS–51–1 and the date it was received in the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land, the date Form LS–51–1 was received by facsimile or in person in the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. For any challenges of a producer's or producer entities' eligibility, the county FSA personnel would make a ''check mark'' in the space provided on Form LS–51–2 indicating a producer's or producer entities' eligibility has been challenged. After the challenge is resolved ''eligible'' or ''ineligible'' would be entered in the space provided on Form LS–51–2.

(b) County FSA offices shall, at all times, maintain control of the master (original) copy of Forms LS–51–1 and LS–51–2. A copy of each Form LS–51–2 shall be posted and made available for public inspection each day beginning on the first business day of the Request for Referendum period through the 11th business day following the last business day of the Request for Referendum period. An updated copy of Form LS–51–2 shall be posted in the county FSA office during normal business office hours in a conspicuous location.

§ 1220.623 Challenge of eligibility.

(a) *Who may challenge*. Any person may challenge a producer's or producer entity's eligibility to request a referendum. Each challenge must be in writing include the full name of the individual or other producer entity being challenged; be made on a separate piece of paper; and be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(b) *Challenge period*. A challenge of a person's eligibility to request a referendum may be made on any business day during the 4-week Request for Referendum period through the 11th business day after the Request for Referendum period.

(c) *Challenged names*. Producers whose eligibility is challenged shall be so noted with a ''checkmark'' in the space provided on Form LS–51–2.

(d) *Determination of challenges*. The FSA County Committee (COC) or designee, acting on behalf of the Administrator, AMS, shall make a determination concerning the challenge and shall notify challenged producers as soon as practicable, but no later than the 14th

business day after the end of the request for referendum period. If the COC or designee is unable to determine whether a person was a producer during the representative period, the COC or designee may require the person challenged to submit records such as sales documents or similar documents to verify producer status during the representative period.

(e) *Appeal*. A person declared to be ineligible by the COC or designee, acting on behalf of the Administrator, AMS, may file an appeal at the county FSA office within 3 business days after notification by the county FSA office of its decision. Such person may be required to provide documentation such as sales documents or similar documents in order to demonstrate eligibility. An appeal shall be determined by the COC or designee as soon as practicable, but in all cases not later than the 18th business day after the last day of the Request for Referendum period. The determination of the COC or designee on an appeal shall be final.

(f) *Resolved challenges*. A challenge shall be determined to have been resolved if the determination of the COC or designee, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the COC or designee after an appeal. After the challenge has been resolved, the county FSA office shall write either ''eligible'' or ''ineligible'' in the space provided on Form LS–51–2.

§ 1220.624 Canvassing

Canvassing of Forms LS–51–1 and LS–51–2 shall take place as soon as possible after the opening of county FSA offices on the 19th business day following the Request for Referendum period. Such canvassing shall be under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, who shall make a determination as to the number of valid or invalid requests for a referendum.

(a) Invalid requests for a referendum. An invalid request for a referendum may include the following:

(1) Form LS–51–1 is not signed and/or all required information has not been provided;

(2) Form LS–51–1 returned in person or by facsimile was not received by the last business day of the Request for Referendum period;

(3) Form LS–51–1 returned by mail was not postmarked by the last business day of the Request for Referendum period;

(4) Form LS–51–1 returned by mail was not received in the county FSA office by the 10th business day after the Request for Referendum period;

(5) Form LS–51–1 is mutilated or marked in such a way that any required information on the form is illegible; and/or

(6) Form LS–51–1 not returned to the appropriate county FSA office.

(b) Any Form LS–51–1 determined invalid shall not be considered as a request for a referendum.

§ 1220.625 Counting requests.

The requests for a referendum shall be counted by the COC or designee on the 19th business day after the last business day of the Request for Referendum period. Requests for a referendum shall be counted as follows:

(a) Total number of producers registering to request a referendum;

(b) Number of eligible producers requesting a referendum;

(c) Number of challenged producers deemed ineligible;

(d) Number of challenged producers; and

(e) Number of invalid requests for a referendum.

§ 1220.626 Public review.

The public may witness the counting from an area designated by the FSA County Executive Director (CED) or designee, acting on behalf of the Administrator, AMS, but may not interfere with the process.

§ 1220.627 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS. Such report shall include, the information listed in §§ 1220.624 and 1220.625. The county FSA office shall notify the FSA State office of the results of the Request for Referendum on a form provided by the Administrator, FSA. Each county FSA

office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

§ 1220.628 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, a report summarizing the data contained in each of the reports from the county FSA office on a State report form provided by the Administrator, FSA. The State FSA office shall maintain one copy of the summary where it shall be available for public inspection upon request for a period of not less that 12 months after the results have been released.

§ 1220.629 Reporting results.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the Request for Referendum. The Department will issue an official press release announcing the results of the Request for Referendum and publish the same results in the FEDERAL REGISTER. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2627 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

§ 1220.630 Disposition of records.

Forms LS–51–1 and LS–51–2 and county reports shall be placed in sealed containers under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, and such container shall be marked with ''Request for Soybean Referendum.'' Such records shall remain in the secured custody of the CED or designee for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period, the CED or designee shall destroy the records.

§ 1220.631 Instructions and forms.

The Administrator, AMS, is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Pork Promotion, Research, and Consumer Information Order

DEFINITIONS

Sec.
1230.1 Act.
1230.2 Department.
1230.3 Secretary.
1230.4 Board.
1230.5 Consumer information.
1230.6 Council.
1230.7 Customs Service.
1230.8 Delegate Body.
1230.9 Fiscal period.
1230.10 Imported.
1230.11 Imported pork and pork products.
1230.12 Importer.
1230.13 Market.
1230.14 Market value.
1230.15 Part and subpart.
1230.16 Person.
1230.17 Plans and projects.
1230.18 Porcine animal.
1230.19 Pork.
1230.20 Pork product.
1230.21 Producer.
1230.22 Promotion.
1230.23 Research.
1230.24 State.
1230.25 State association.
1230.26 State where produced.

NATIONAL PORK PRODUCERS DELEGATE BODY

1230.30 Establishment and membership.

1230.31 Nomination and appointment of producer members.
1230.32 Conduct of election.
1230.33 Appointment of importer members.
1230.34 Term of office.
1230.35 Vacancies.
1230.36 Procedure.
1230.37 Officers.
1230.38 Compensation and reimbursement.
1230.39 Powers and duties of the Delegate Body.

NATIONAL PORK BOARD

1230.50 Establishment and membership.
1230.51 Term of office.
1230.52 Nominations.
1230.53 Nominee's agreement to serve.
1230.54 Appointment.
1230.55 Vacancies.
1230.56 Procedure.
1230.57 Compensation and reimbursement.
1230.58 Powers and duties of the Board.

PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1230.60 Promotion, research, and consumer information.

EXPENSES AND ASSESSMENTS

1230.70 Expenses.
1230.71 Assessments.
1230.72 Distribution of assessments.
1230.73 Uses of distributed assessments.
1230.74 Prohibited use of distributed assessments.
1230.75 Adjustment of accounts.
1230.76 Charges.
1230.77 [Reserved]

REPORTS, BOOKS, AND RECORDS

1230.80 Reports.
1230.81 Books and records.
1230.82 Confidential treatment.

MISCELLANEOUS

1230.85 Proceedings after termination.
1230.86 Effect of termination or amendment.
1230.87 Personal liability.
1230.88 Patents, copyrights, inventions, and publications.
1230.89 Amendments.
1230.90 Separability.
1230.91 Paperwork Reduction Act assigned number.

Subpart B—Rules and Regulations

DEFINITIONS

1230.100 Terms defined.

ASSESSMENTS

1230.110 Assessments on imported pork and pork products.
1230.111 Remittance of assessments on domestic porcine animals.
1230.112 Rate of assessment.
1230.113 Collection and remittance of assessments for the sale of feeder pigs and market hogs.
1230.115 Submission of annual financial statements.

MISCELLANEOUS

1230.120 OBM control number assigned pursuant to the Paperwork Reduction Act.

Subpart C [Reserved]

Subpart D—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

1230.501–1230.512 [Reserved]

Subpart E—Procedures for the Conduct of Referendum

DEFINITIONS

1230.601 Act.
1230.602 Administrator, AMS.
1230.603 Administrator, FSA.
1230.604 Department.
1230.605 Farm Service Agency.
1230.606 Farm Service Agency County Committee.
1230.607 Farm Service Agency County Executive Director.
1230.608 Imported porcine animals, pork, and pork products.
1230.609 Importer.
1230.610 Order.
1230.611 Porcine animal.
1230.612 Person.
1230.613 Pork.
1230.614 Pork product.
1230.615 Producer.
1230.616 Public notice.
1230.617 Referendum.
1230.618 Representative period.
1230.619 Secretary.
1230.620 State.
1230.621 Voting period.

REFERENDUM

1230.622 General.
1230.623 Supervision of referendum.
1230.624 Eligibility.
1230.625 Time and place of registration and voting.
1230.626 Facilities for registering and voting.
1230.627 Registration form and ballot.
1230.628 Registration and voting procedures for producers.
1230.629 Registration and voting procedures for importers.
1230.630 List of registered voters.
1230.631 Challenge of votes.
1230.632 Receiving ballots.

1230.633 Canvassing ballots.
1230.634 FSA county office report.
1230.635 FSA State office report.
1230.636 Results of the referendum.
1230.637 Disposition of ballots and records.
1230.638 Instructions and forms.
1230.639 Additional absentee voter challenge period.

AUTHORITY: 7 U.S.C. 4801–4819.

Subpart A—Pork Promotion, Research, and Consumer Information Order

SOURCE: 51 FR 31903, Sept. 5, 1986, unless otherwise noted.

DEFINITIONS

§ 1230.1 Act.

Act means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.2 Department.

Department means the United States Department of Agriculture.

§ 1230.3 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

§ 1230.4 Board.

Board means the National Pork Board established pursuant to § 1230.50.

§ 1230.5 Consumer information.

Consumer information means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

§ 1230.6 Council.

Council means the National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

§ 1230.7 Customs Service.

Customs Service means the United States Customs Service of the United States Department of Treasury.

§ 1230.8 Delegate Body.

Delegate Body means the National Pork Producers Delegate Body established pursuant to § 1230.30.

§ 1230.9 Fiscal period.

Fiscal period means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

§ 1230.10 Imported.

Imported means entered, or withdrawn from a warehouse for consumption, in the customs territory of the United States.

§ 1230.11 Imported pork and pork products.

Imported pork and pork products means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the following numbers in Schedule 1 of the Tariff Schedules of the United States Annotated (1985): 106.4020; 106.4040; 106.8000; 106.8500; 107.1000; 107.1500; 107.3020; 107.3040; 107.3060; 107.3515; 107.3525; 107.3540; and 107.3560.

§ 1230.12 Importer.

Importer means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.13 Market.

Market means to sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

§ 1230.14 Market value.

Market value means, with respect to porcine animals which are sold, the price at which they are sold. With respect to porcine animals slaughtered for the sale by the producer, the term means the most recent annual seven-market average for barrows and gilts, as published by the Department. With respect to imported porcine animals,

the term means the declared value. With respect to imported pork and pork products, the term means an amount which represents the value of the live porcine animals from which the pork or pork products were derived, based upon the most recent annual seven-market average for barrows and gilts, as published by the Department.

§ 1230.15 Part and subpart.

Part means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a ''subpart of such part.

§ 1230.16 Person.

Person means any individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

§ 1230.17 Plans and projects.

Plans and projects means promotion, research, and consumer information plans, studies, or projects.

§ 1230.18 Porcine animal.

Porcine animal means a swine, that is raised as (a) a feeder pig, that is, a young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.19 Pork.

Pork means the flesh of a porcine animal.

§ 1230.20 Pork product.

Pork product means an edible product produced or processed in whole or in part from pork.

§ 1230.21 Producer.

Producer means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.22 Promotion.

Promotion means any action, including but not limited to paid advertising and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

§ 1230.23 Research.

Research means any action designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, including the dissemination of the results of such research.

§ 1230.24 State.

State means each of the 50 States.

§ 1230.25 State association.

State association means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no such organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may cease to recognize a State association and instead recognize another organization of producers in a State as that State's association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

§ 1230.26 State where produced.

State where produced means with respect to a porcine animal marketed as a feeder pig or as breeding stock, the State in which that porcine animal was born, and with respect to a porcine animal that is marketed as a market hog, the State in which that porcine animal was fed for market.

NATIONAL PORK PRODUCERS DELEGATE BODY

§ 1230.30 Establishment and membership.

(a) There is hereby established a National Pork Producers Delegate Body which shall consist of producers and importers appointed by the Secretary.

(b)(1) At least two producer members shall be allocated to each State, but any State that has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) [Reserved]

(3) In each fiscal period, shares shall be assigned to each State on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) [Reserved]

(3) In each fiscal period, shares shall be assigned to importers on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to importers.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

§ 1230.31 Nomination and appointment of producer members.

(a) [Reserved]

(b) Delegate Body nominations for appointment as producer members shall be submitted to the Secretary in the number requested by the Secretary by each State association either after an election conducted in accordance with § 1230.32 and by nominating the producers who receive the highest number of votes in such State; or pursuant to a selection process that is approved by the Secretary, is given public-notice at least one week in advance by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and provides complete and equal access to every producer who has paid all assessments due under this subpart and who has not demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body;

(c) The Secretary shall appoint the producer members of each Delegate Body from the nominations submitted in accordance with this section, except that if a State association does not submit nominations in the required manner or number, or if a State has no State association, the Secretary shall select producer members from that State after consultation with representatives of the pork industry in that State.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

§ 1230.32 Conduct of election.

If a State association selects nominees for appointment to the Delegate Body through an election, it shall be conducted in the following manner:

(a) Elections shall be administered by the Board and the Board shall determine the timing of any elections.

(b) Producers who are residents of that State may be named as candidates for election to be nominees for appointment to the Delegate Body:

(1) By a nominating committee of producers in that State appointed by the Board; or

(2) The number of pork producers in a State shall be determined by the Department based on the latest available Department information, which tabulates by State the number of farming operations with porcine animals.

(c) To be eligible to vote in an election to nominate producer members from a State, a person must:

(1) Be a producer who is a resident of that State;

(2) Have paid all assessments due pursuant to this subpart; and

(3) Not have demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body.

(d) The Board shall cause notices of any election to be published at least one week prior to the election in a newspaper or newspapers of general circulation in that State, and in pork production and agricultural trade publications. The notices shall set forth the period of time and places for voting and such other information as the Board considers necessary.

(e) The identity of any person who voted and the manner in which any person voted shall be kept confidential.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

§ 1230.33 Appointment of importer members.

The Secretary shall appoint the importer members of each Delegate Body after consultation with importers.

§ 1230.34 Term of office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve only until the completion of the nomination and appointment process of the succeeding Delegate Body.

(b) Each member of the Delegate Body shall serve until that member's term expires, or a successor is appointed, whichever occurs later.

§ 1230.35 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the appropriate State association or by importers, depending upon whether the vacancy is a producer or importer vacancy.

§ 1230.36 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is, the concurring votes of a majority of the shares cast on that action. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

§ 1230.37 Officers.

The Delegate Body shall elect its Chairperson by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairperson.

§ 1230.38 Compensation and reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.39 Powers and duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate;

(c) To determine the percentage of the net assessments attributable to porcine animals produced in a State that each State association shall receive; and

(d) To nominate not less than 23 persons, including producers from a minimum of 12 States or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for

each vacancy on the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with § 1230.36.

NATIONAL PORK BOARD

§ 1230.50 Establishment and membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to § 1230.39(d). The Board shall be deemed to be constituted once the Secretary makes the appointments to the Board.

§ 1230.51 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for one year terms; One-third shall serve for two year terms; and the remaining One-third shall serve for three year terms.

(b) Each member of the Board shall serve until the member's term expires, or until a successor is appointed, unless the member is removed pursuant to § 1230.55(b).

(c) No member shall serve more than two consecutive terms provided that those members serving an initial term of one year are eligible to serve two additional consecutive terms, but in no event, more than seven years in total.

(d) The first year of the terms of the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

§ 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with § 1230.39(d).

§ 1230.53 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with the Council or a State association or any organization that has a contract with the Board and thereafter disclose, at any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters concerning any entity referred to in paragraph (b) of this section, if an officer or member of the executive committee of such entity.

§ 1230.54 Appointment.

From the nominations submitted pursuant to § 1230.39(d), the Secretary shall appoint 15 producers or importers as members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

§ 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board fails or refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued

service would be detrimental to the purposes of the Act.

§ 1230.56 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of its meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1230.57 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.58 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented:

(1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and

(2) The budget, plans, or projects for which State associations are to receive funds under § 1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1230.71. Any such contract or agreement shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(g) To appoint or employ staff persons as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers or State associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To select committees and subcommittees of Board members and to adopt such rules and by laws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To prescribe rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under §1230.71 in, and only in, an obligation of the United States, a general obligation of any State or any political subdivision thereof, an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at the end of each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

PROMOTION, RESEARCH, AND CONSUMER INFORMATION

§1230.60 Promotion, research, and consumer information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand domestic and foreign markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved, or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

(c) No plan or project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan or project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

EXPENSES AND ASSESSMENTS

§ 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to § 1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body and for the conduct of referenda.

§ 1230.71 Assessments.

(a)(1) Each producer producing in the United States a porcine animal raised as a feeder pig that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a feeder pig.

(2) Each producer producing in the United States a porcine animal raised for slaughter that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(3) Each producer producing in the United States a porcine animal raised for slaughter that such producer slaughters for sale shall pay an assessment on that animal unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(4) Each producer producing in the United States a porcine animal raised for breeding stock that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid by a person on that animal as breeding stock.

(5) Each importer importing a porcine animal, pork, or pork product into the United States shall pay an assessment on that porcine animal, pork, or pork product, unless such importer demonstrates to the Board by appropriate documentation that an assessment was previously paid for that porcine animal, pork, or pork product.

(b)(1) Each purchaser of a porcine animal raised by a producer as a feeder pig or market hog shall collect an assessment on such porcine animal if an assessment is due pursuant to paragraph (a) of this section, and shall remit that assessment to the Board. For the purposes of collection and remittance of assessments, any person engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

(2) Assessments on porcine animals raised as breeding stock which are sold by a commission merchant, auction, market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be collected and remitted by the commission merchant, auction market, or livestock market selling such porcine animals.

(3) Each producer of porcine animals slaughtered for sale by the producer or

sold directly to a consumer in connection with a custom slaughter operation shall remit an assessment to the Board if an assessment is due pursuant to paragraph (a) of this section.

(4) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the ''National Pork Board,'' which, together with the reports required by § 1230.80, shall be sent to the address designated by the Board.

(5) Each importer of a porcine animal, pork, or pork product shall remit an assessment to the Customs Service at the time such porcine animal, pork, or pork product is imported or in such manner as may be established by regulations prescribed by the Board and approved by the Secretary, if an assessment is due pursuant to paragraph (a) of this section.

(c) The initial rate of assessment shall be 0.25 percent of market value.

(d) The rate of assessment may, upon the recommendation of the Delegate Body, be increased by regulations prescribed by the Board and approved by the Secretary by no more than 0.1 percent of such market value per fiscal period to a total of not more than 0.5 percent of market value.

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment, which shall be established by regulations prescribed by the Board and approved by the Secretary.

[51 FR 31903, Sept. 5, 1986; 51 FR 36383, Oct. 10, 1986; 53 FR 1910, Jan. 25, 1988; 53 FR 30245, Aug. 11, 1988; 56 FR 6, Jan. 2, 1991]

§ 1230.72 Distribution of assessments.

Assessments remitted to the Board shall be distributed as follows:

(a) Each State association shall receive on a monthly basis, a percentage determined by the Delegate Body or 16.5 percent, whichever is higher, of the net assessments attributable to that State. The net assessments attributable to a State is the total amount of assessments received from producers in a State.

(b) A State association which was conducting a pork promotion program in the period from July 1, 1984 to June 30, 1985, shall receive additional amounts at such times as the Board may determine, so that the total amount received on an annual basis would be equal to the amount that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals subject to assessment, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessment then in effect from such State to the Council and other national entities involved in pork promotion, research, and consumer information. This paragraph shall apply to a State association only if the annual amount determined under this paragraph would be greater than the annual amount determined under paragraph (a) of this section.

(c) The Council shall receive on a monthly basis 35 percent of the net assessments until after the referendum is conducted, and 25 percent thereafter and until 12 months after the referendum.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

§ 1230.73 Uses of distributed assessments.

(a) Each State association shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for:

(1) Financing plans and projects;

(2) The Board's expenses for the Board's administration, maintenance,

and functioning as authorized by the Secretary;

(3) Accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and

(4) The Secretary's administrative costs in carrying out this part.

§ 1230.74 Prohibited use of distributed assessments.

(a) No funds collected under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in section 4911 (d) and (e)(2) of the Internal Revenue Code of 1954, or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this part.

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with annual financial statements audited by a certified public accountant of all funds distributed to such organizations pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988; 60 FR 33683, June 29, 1995]

§ 1230.75 Adjustment of accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. Any amount due the Board shall be remitted to the Board by the next date for remitting assessments as provided in § 1230.71(b)(3). Any overpayment to the Board shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1230.76 Charges.

Any assessment not paid when due shall be increased 1.5 percent each month beginning with the day following the date such assessment was due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

§ 1230.77 [Reserved]

REPORTS, BOOKS, AND RECORDS

§ 1230.80 Reports.

Each person responsible for collecting or remitting any assessment under § 1230.71(b) shall report at the time for remitting assessments to the Board the following information:

(a) The quantity and market value of the porcine animals subject to assessment;

(b) The amount of assessment collected;

(c) The month the assessment was collected;

(d) The State where the porcine animals were produced; and

(e) Such other information as may be required by regulations prescribed by the Board and approved by the Secretary.

§ 1230.81 Books and records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any required reports. Such records shall be retained for at least two years

beyond the fiscal period of their applicability.

§ 1230.82 Confidential treatment.

All information obtained from the books, records or reports required to be maintained under §§ 1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this subpart or of statistical data collected therefrom, which statements or data do not identify the information furnished by any person; or

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1230.85 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of, the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreement;

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

§ 1230.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1230.87 Personal liability.

No member or employee of the Board shall be held personally liable, either individually or jointly, in any way whatsoever to any person for errors in

judgment, mistakes, or other acts of either commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1230.88 Patents, copyrights, inventions, and publications.

Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications inure to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1230.85 shall apply to determine disposition of all such property.

§ 1230.89 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1230.90 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1230.91 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter and have been assigned OMB Control Number 0851–0151.

Subpart B—Rules and Regulations

SOURCE: 53 FR 1911, Jan. 25, 1988, unless otherwise noted.

DEFINITIONS

§ 1230.100 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in Subpart A of this part.

ASSESSMENTS

§ 1230.110 Assessments on imported pork and pork products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	0.45 percent Customs Entered Value.
0103.91.0000	0.45 percent Customs Entered Value.
0103.92.0000	0.45 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000	.20	.440920
0203.12.1010	.20	.440920
0203.12.1020	.20	.440920
0203.12.9010	.20	.440920
0203.12.9020	.20	.440920
0203.19.2010	.24	.529104
0203.19.2090	.24	.529104
0203.19.4010	.20	.440920
0203.19.4090	.20	.440920
0203.21.0000	.20	.440920
0203.22.1000	.20	.440920
0203.22.9000	.20	.440920
0203.29.2000	.24	.529104
0203.29.4000	.20	.440920
0206.30.0000	.20	.440920
0206.41.0000	.20	.440920
0206.49.0000	.20	.440920
0210.11.0010	.20	.440920
0210.11.0020	.20	.440920
0210.12.0020	.20	.440920
0210.12.0040	.20	.440920
0210.19.0010	.24	.529104
0210.19.0090	.24	.529104
1601.00.2010	.28	.617288
1601.00.2090	.28	.617288
1602.41.2020	.31	.683426
1602.41.2040	.31	.683426
1602.41.9000	.20	.440920
1602.42.2020	.31	.683426
1602.42.2040	.31	.683426
1602.42.4000	.20	.440920
1602.49.2000	.28	.617288
1602.49.4000	.24	.529104

[63 FR 45936, Aug. 28, 1998, as amended at 64 FR 44644, Aug. 17, 1999]

§ 1230.111 Remittance of assessments on domestic porcine animals.

Assessments on domestic porcine animals shall be remitted to the National Pork Board pursuant to § 1230.71(b) in accordance with the following remittance schedule.

(a) Monthly assessments totaling $25 or more shall be remitted to the Board by the 15th day of the month following the month in which the porcine animals were marketed or by the 15th day following the end of a Board-approved, consecutive 4-week period in which the porcine animals were marketed.

(b) Assessments totaling less than $25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 15th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(c) Assessments totaling $25 or more during any month of a quarter must be remitted by the 15th day of the month following the month of the quarter in which the assessments totaled $25 or more, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(d) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b) or (c) of this section must be remitted by the 15th day of the month following the end of the quarter regardless of the amount.

[56 FR 6, Jan. 2, 1991]

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.45 percent of market value.

[60 FR 29965, June 7, 1995]

§ 1230.113 Collection and remittance of assessments for the sale of feeder pigs and market hogs.

Pursuant to the provisions of § 1230.71, purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111.

[65 FR 7283, Feb. 14, 2000]

§ 1230.115 Submission of annual financial statements.

State Pork Producer Associations, as defined in § 1230.25, that receive distributions of assessments pursuant to § 1230.72 and that receive less than $30,000 in assessments annually, may satisfy the requirements of § 1230.74(b) by providing to the Board unaudited annual financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that two members of the State association attest to and certify such financial statements. Notwithstanding any provisions of the Order to the contrary, State associations that receive less than $30,000 in distributed assessments annually and submit unaudited annual financial statements to the Board shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years, or more frequently if deemed necessary by the Board or the Secretary. The Board may elect to conduct its own audit of the annual financial statements of State Pork Producer Associations that receive less than $2,000 in distributed assessments annually, every 5 years in lieu of the required financial statements.

[60 FR 33683, June 29, 1995]

MISCELLANEOUS

§ 1230.120 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0151.

Subpart C [Reserved]

Subpart D—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

§ 1230.501–1230.512 [Reserved]

Subpart E—Procedures for the Conduct of Referendum

SOURCE: 65 FR 43508, July 13, 2000, unless otherwise noted.

DEFINITIONS

§ 1230.601 Act.

The term *Act* means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.602 Administrator, AMS.

The term *Administrator*, *AMS*, means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.603 Administrator, FSA.

The term *Administrator*, *FSA*, means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.604 Department.

The term *Department* means the United States Department of Agriculture.

§ 1280.605 Farm Service Agency.

The term *Farm Service Agency* also referred to as ''FSA'' means the Farm Service Agency of the Department.

§ 1230.606 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee*, also referred to as the *FSA County Committee* or *COC*, means the group of persons within a county elected to act as the Farm Service Agency County Committee.

§ 1230.607 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director* also referred to as the *CED*, means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and be responsible for the day-to-day operations of the FSA county office or the person acting in such capacity.

§ 1230.608 Imported porcine animals, pork, and pork products.

The term *Imported porcine animals, pork, and pork products* means those animals, pork, or pork products that are imported into the United States and subject to assessment under the harmonized tariff schedule numbers identified in § 1230.110 of the regulations.

§ 1230.609 Importer.

The term *Importer* means a person who imports porcine animals, pork, or pork products into the United States.

§ 1280.610 Order.

The term *Order* means the Pork Promotion, Research, and Consumer Information Order.

§ 1230.611 Porcine animal.

The term *Porcine animal* means a swine, that is raised:

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seedstock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.612 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1230.613 Pork.

The term *Pork* means the flesh of a porcine animal.

§ 1230.614 Pork product.

The term *Pork product* means an edible product processed in whole or in part from pork.

§ 1230.615 Producer.

The term *Producer* means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.616 Public notice.

The term *Public notice* means information regarding a referendum that would be provided by the Secretary, such as press releases, newspapers, electronic media, FSA county newsletters, and the like. Such notice would contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1230.617 Referendum.

The term *Referendum* means any referendum to be conducted by the Secretary pursuant to the Act whereby persons who have been producers and importers during a representative period would be given the opportunity to vote to determine whether producers and importers favor continuation of the Order.

§ 1230.618 Representative period.

The term *Representative period* means the 12-consecutive months prior to the first day of absentee and importer voting in the referendum. The representative period for this referendum is August 18, 1999, through August 17, 2000.

§ 1230.619 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated to act in the Secretary's stead.

§ 1230.620 State.

The term *State* means each of the 50 States.

§ 1230.621 Voting period.

The term *Voting period* means the 3-consecutive business day period for in-person voting.

REFERENDUM

§ 1230.622 General.

(a) A referendum to determine whether eligible pork producers and importers favor continuation of the Pork Checkoff Program will be conducted in accordance with this subpart.

(b) The Pork Checkoff Program will be terminated only if a majority of producers and importers voting in the referendum favor such termination.

(c) The referendum will be conducted at the county FSA offices for producers and at FSA headquarters office in Washington, DC, for importers.

§ 1230.623 Supervision of referendum.

The Administrator, AMS, will be responsible for conducting the referendum in accordance with this subpart.

§ 1230.624 Eligibility.

(a) Eligible producers and importers. Persons eligible to register and vote in the referendum include:

(1) Individual Producers. Each individual that owns and sells at least one hog or pig during the representative period and does so in his or her own name is entitled to cast one ballot.

(2) Producers who are a corporation or other entity. Each corporation or other entity that owns and sells at least one hog or pig during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, owners of community property, or a corporation engaged in the production of hogs and pigs will be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer if he or she sells at least one hog or pig in his or her own name.

(3) Importers. Each importer who imports hogs, pigs, pork, or pork products during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, or a corporation engaged in the importation of hogs, pigs, pork,

or pork products will be entitled to only one vote; provided, however, that any member of a group may register to vote as a importer if he or she imports hogs, pigs, pork, or pork products in his or her own name.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible producer or importer (other than an individual producer or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any eligible producer or importer corporation or other entity must certify that he or she is authorized to take such action.

§ 1230.625 Time and place of registration and voting.

(a) Producers. The referendum shall be held for 3-consecutive days on September 19, 20, 21, 2000. Eligible producers shall register and vote on-site following the procedures in 1230.628. Producers shall register and vote during the normal business hours of each county FSA office or request absentee ballots from the county FSA offices by mail, telephone, or facsimile, or pick up an absentee ballot in-person. The absentee voting period shall be from August 18, 2000, through September 21, 2000.

(b) Importers. Importer voting shall take place during the same time period provided producers for in-person and absentee voting in the referendum. The referendum shall be conducted by mail ballot by the FSA headquarters office in Washington, DC, between August 18, 2000, through September 21, 2000.

§ 1230.626 Facilities for registering and voting.

(a) Producers. Each county FSA office shall provide:

(1) Adequate facilities and space to permit producers of hogs and pigs to register and to mark their ballots in secret;

(2) A sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Copies of the Order for review.

(b) Absentee ballots. Each FSA county office shall provide each producer an absentee ballot package upon request. Producers can pick up an absentee ballot in-person or request it by telephone, mail, or facsimile. The FSA county office will provide absentee ballots by mail for all requests received by telephone, mail, or facsimile. The FSA county office shall record date of receipt of the ''Pork Referendum'' envelope containing the completed absentee ballot on the Absentee Voter Request List and place it unopened in a secure ballot box.

(c) Importers. The FSA headquarters office in Washington, DC, will:

(1) Mail ballot packages to eligible importers upon request;

(2) Have a sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Mail copies of the Order to importers if requested by mail, telephone, or facsimile. Importers can also pickup a ballot in-person.

§ 1230.627 Registration form and ballot.

(a) *Producers.* (1) A ballot (Form LS–72) and combined registration and certification form (Form LS–72–2) will be used for voting in-person. The information required on the registration form includes name, address, and telephone number. Form LS–72–2 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check a ''yes'' or ''no.''

(2) A combined registration and voting form (Form LS–73) will be used for absentee voting. The information required on this combined registration and voting form includes name, address, and telephone number. Form LS–73 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check ''yes'' or ''no.''

(b) *Importers.* A combined registration and ballot form (Form LS–76) will be

used for importer voting. The information required on this combined registration and ballot form includes name, address, and telephone number. Form LS–76 also contains the certification statement referenced in § 1230.629. The ballot will require importers to check ''yes'' or ''no.''

§ 1230.628 Registration and voting procedures for producers.

(a) *Registering and voting in-person.* (1) Each eligible producer who wants to vote whether as an individual or as a representative of a corporation or other entity shall register during the 3-day in-person voting period at the county FSA office where FSA maintains and processes the individual producer's or corporation's or other entities' administrative farm records. A producer voting as an individual or as a representative of a corporation or other entity not participating in FSA programs, shall register and vote in the county FSA office serving the county where the individual producer or corporation or other entity owns hogs or pigs. An individual or an authorized representative of a corporation or other entity who owns hogs or pigs in more than one county shall register and vote in the FSA county office where the individual or corporation or other entity does most of their business. Producers shall be required to record on the In-Person Voter Registration List (Form LS–75) their name and address, and if applicable, the name and address of the corporation or other entity they represent before they can receive a registration form and ballot. To register, producers shall complete the in-person registration and certification form (Form LS–72–2) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period; and

(ii) The person voting on behalf of a corporation or other entity referred to in § 1230.612 is authorized to do so.

(2) Each eligible producer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in § 1230.625 and on September 19, 20, 21, 2000. Eligible producers who record their names and addresses and, if applicable, the name and address of the corporation or other entity they are authorized to represent on the In-Person Voter Registration List (Form LS–75) will receive a combined registration and certification form printed on an envelope (Form LS–72–2) and a ballot (Form LS–72). Producers will enter the information requested on the combined registration and certification form/envelope (Form LS–72–2) as indicated above. Producers will then mark their ballots to indicate ''yes'' or ''no.'' Producers will place their completed ballots in an envelope marked ''Pork Ballot'' (Form LS–72–1), seal and place it in the completed and signed registration form/envelope marked ''Pork Referendum'' (Form LS–72–2), seal that envelope and personally place it in a box marked ''Ballot Box'' or other designated receptacle. Voting will be conducted on-site under the supervision of the county FSA County Executive Director (CED).

(b) *Absentee voting.* (1) Eligible producers who are unable to vote in-person may request an absentee voting package consisting of a combined registration and absentee ballot form (Form LS–73) and two envelopes—one marked ''Pork Ballot'' (Form LS–72–1) and the other marked ''Pork Referendum'' (Form LS–73–1) by mail, telephone, facsimile, or by picking up one in-person from the county FSA office where FSA maintains and processes the producer's administrative farm records.

(2) If a producer, whether requesting an absentee ballot as an individual or as an authorized representative of a corporation or other entity that does not participate in FSA programs, and therefore does not have administrative records at a county FSA office, he or she may request an absentee voting package by telephone, mail, facsimile, or pick it up in-person from the county FSA office serving the county where the individual or corporation or other entity owns hogs or pigs. An individual or authorized representative of a corporation or other entity, who owns hogs or pigs in more than one county can request an absentee ballot from the county FSA office where the producer

or corporation or other entity does most of their business.

(3) An absentee voting package will be mailed to producers by the FSA CED to the address provided by the prospective voter. Only one absentee registration form and absentee ballot will be provided to each eligible producer. The absentee ballots and registration forms may be requested during August 1, 2000, through September 18, 2000.

(4) The county FSA office will enter on the Absentee Voter Request List (Form LS–74) the name and address of the individual or corporation or other entity requesting an absentee ballot and the date the forms were requested.

(5) To register, eligible producers shall complete and sign the combined registration and certification form and absentee ballot (Form LS–73) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period;

(ii) If voting on behalf of a corporation or other entity referred to in § 1230.612, they are authorized to do so.

(6) A producer, after completing the absentee voter registration form and marking the ballot, shall remove the ballot portion of the combined registration and absentee ballot form (Form LS–73) and seal the completed ballot in a separate envelope marked ''Pork Ballot'' (Form LS–72–1) and place the sealed ''Pork Ballot'' envelope in the mailing envelope marked ''Pork Referendum'' (Form LS–73–1) along with the signed registration form. Producers are required to print their name and address on the mailing envelope marked ''Pork Referendum'' (Form LS–73–1), and mail or hand deliver it to the county FSA office from which the producer or corporation or other entity obtained the absentee voting package. Absentee ballots returned in-person must be received by close of business on the last day of the in-person voting period, which is September 21, 2000. Ballots received after that date will be counted as invalid ballots.

(7) Absentee ballots returned by mail have to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the county FSA office by the close of business on the 5th business day after the last day of the in-person voting period, which is September 28, 2000. Absentee ballots received after that date will be counted as invalid ballots. Upon receiving the ''Pork Referendum'' envelope (Form LS–73–1) containing the registration form and ballot, the county FSA CED will record the date the ''Pork Referendum'' envelope (Form LS–73–1) containing the absentee ballot was received in the FSA county office on the Absentee Voter Request List (Form LS–74) opposite the name of the producer voting absentee. The county FSA CED will place it, unopened, in a secure ballot box.

§ 1230.629 Registration and voting procedures for importers.

(a) Individual importers, corporations, or other entities can obtain the registration and certification forms, ballots, and envelopes by mail from the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, P.O. Box 44366, Washington, DC 20026–4366. Importers may pick up the voting materials in-person at USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. Importers may also request voting materials by facsimile or telephone. The facsimile number is 202/690–3354. The telephone number is 202/720–6833.

(b) When requesting a ballot, eligible importers will be required to submit a U.S. Customs Service Form 7501 showing that they paid the pork assessment during the representative period.

(c) Upon receipt of a request and U.S. Customs Service Form 7501, the voting materials will be mailed to importers by the FSA headquarters office in Washington, DC, to the address provided by the importer or importer corporation or other entity. Only one mail ballot and registration form will be provided to each eligible importer. The forms must be requested during August 1, 2000, through September 21, 2000.

(d) The FSA headquarters office in Washington, DC, will enter on the Importer Ballot Request List (Form LS–

77) the name and address of the importer requesting a ballot and the date of the request.

(e) To register, eligible importers will complete and sign the combined registration form and ballot (Form LS–76) and certify that:

(1) To the best of their knowledge and belief the information provided on the form is true and accurate;

(2) If voting on behalf of an importer corporation or other entity referred to in § 1230.612, they are authorized to do so.

(f) Eligible importers, after completing the combined ballot and registration form, will remove the ballot portion of the combined registration and ballot form (Form LS–76) and seal the completed ballot in a separate envelope marked ''Pork Ballot'' (Form LS–72–1) and place the sealed ''Pork Ballot'' envelope in the mailing envelope marked ''Pork Referendum'' (Form LS–73–1) along with the signed registration form. Importers, corporations, or other entities must legibly print their name and address on the mailing envelope marked ''Pork Referendum'' (Form LS–73–1), and mail the envelope to the FSA headquarters office at the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, Post Office Box 44366, Washington, DC 20026–4366. Importers may hand deliver the ''Pork Referendum'' envelope to USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(g) The ''Pork Referendum'' envelope (Form LS–73–1) containing the registration form and ballot has to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the FSA headquarters office by the close of business on the 5th business day after the date of the last day of the in-person voting period, which is September 28, 2000. If delivered in-person, it has to reach headquarters office not later than the last day of the in-person voting period. Ballots received after that date will be counted as invalid ballots. Upon receiving the ''Pork Referendum'' envelope (Form LS–73–1) containing the registration form and ballot, an FSA employee will record the date the ''Pork Referendum'' envelope containing the completed ballot was received in the FSA headquarters office in Washington, DC, on the Importer Ballot Request List (Form LS–77) directly opposite the voting importer's name. The FSA employee will place the ''Pork Referendum'' envelope, unopened, in a secure ballot box.

§ 1230.630 List of registered voters.

(a) *Producers.* The In-Person Voter Registration List (Form LS–75) and the Absentee Voter Request List (Form LS–74) will be available for inspection during the 3 days of the voting period and during the 7 business days following the date of the last day of the voting period at the county FSA office. The lists will be posted during regular office hours in a conspicuous public location at the FSA county office. The Absentee and In-Person Voter Registration Lists will be updated and posted daily. The complete In-Person Voter Request List (Form LS–75) will be posted in the FSA county office on the 1st business day after the date of the last day of the voting period. The complete Absentee Voter Request List (Form LS–74) will be posted in the FSA county office on the 6th business day after the date of the last day of the voting period.

(b) *Importers.* The Importer Ballot Request List (Form LS–77) will be maintained by the FSA headquarters office in Washington, DC, and not posted.

§ 1230.631 Challenge of votes.

(a) *Challenge period.* During the dates of the 3-consecutive day voting period and the 7 business days following the voting period, the ballots of producers may be challenged at the FSA county office.

(b) *Who can challenge.* Any person can challenge a producer's vote. Any person who wants to challenge shall do so in writing and shall include the full name of the individual or corporation or other entity being challenged. Each challenge of a producer vote must be made on a separate sheet of paper and each challenge must be signed by the challenger. The identity of the challenger will be kept confidential except

as the Secretary may direct or as otherwise required by law.

(c) *Who can be challenged.* Any producer having cast an in-person ballot or an absentee ballot whose name is posted on the In-Person Voter Registration List (Form LS–75) or the Absentee Voter Request List (Form LS–74) can be challenged. There is no challenge process for importers.

(d) *Notification of challenges.* The FSA County Committee or its representative, acting on behalf the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than 12 business days after the date of the last day of the in-person voting period. FSA will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to the FSA county offices within 5 business days of notification and not later than 17 business days after the date of the last day of the voting period.

(e) *Determination of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable, but no later than 22 business days after the date of the last day of the in-person voting period of its decision.

(f) *Challenged ballot.* A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the Administrator, AMS, after an appeal.

(g) *Appeal.* A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office within 5 business days after the date of receipt of the letter of notification of ineligibility, but not later than November 2, 2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA county office or as soon as practical thereafter.

(h) An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day after the date of the last day of the voting period. The Administrator, AMS, shall send her decision on a producer's appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator's, AMS, determination on his or her appeal. The Administrator's, AMS, determination on an appeal shall be final.

[65 FR 43508, July 13, 2000, as amended at 65 FR 62579, Oct. 19, 2000]

§ 1230.632 Receiving ballots.

(a) *Producers.* A ballot shall be considered to be received on time if:

(1) It was cast in-person in the county FSA office prior to the close of business on the date of the last day of the in-person voting period; or

(2) It was cast as an absentee ballot, having a postmarked date not later than the last day of the in-person voting period and was received in the county FSA office not later than the close of business, 5 business days after the last day of the in-person voting period.

(b) *Importers.* A ballot shall be considered to be received on time if it had a postmarked date not later than the date of the last day of the in-person voting period and was received in the FSA headquarters office in Washington, DC, not later than the close of business, 5 business days after the last day of the in-person voting period.

§ 1230.633 Canvassing ballots.

(a) *Producers.* (1) Counting the ballots. Under the supervision of FSA CED, acting on behalf of the Administrator, AMS, the in-person registration and certification form envelopes (Form LS–72–2) and the absentee ''Pork Referendum'' envelopes (Form LS–73–1) containing the ''Pork Ballot'' envelopes for producer voters will be checked against the In-Person Voter Registration List (Form LS–75) and the

Absentee Voter Request List (Form LS–74), respectively, to determine properly registered voters. The ballots of producers voting in-person whose names are not on the In-Person Voter Registration List (Form LS–75), will be declared invalid. Likewise, the ballots of producers voting absentee whose names are not on the Absentee Voter Request List (Form LS–74) will be declared invalid. All ballots of challenged producer voters declared ineligible and invalid ballots will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular business hours on the 46th business day after the last day of the in-person voting period. FSA county office employees will remove the sealed ''Pork Ballot'' envelopes (Form LS–72–1) from the registration form envelopes and ''Pork Referendum'' envelopes (absentee voting) envelopes of all eligible producer voters and all challenged producer voters determined to be eligible. After removing all ''Pork Ballot'' envelopes, FSA county employees will shuffle the sealed ''Pork Ballot'' envelopes or otherwise mix them up so that ballots cannot be matched with producers' names. After shuffling the ''Pork Ballot'' envelopes, FSA county employees will open them and count the ballots. The ballots will be counted as follows:

(i) Number of eligible producers casting valid ballots;

(ii) Number of producers favoring continuation of the Pork Checkoff Program;

(iii) Number of producers favoring termination of the Pork Checkoff Program;

(iv) Number of challenged producer ballots deemed ineligible;

(v) Number of invalid ballots; and

(vi) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if a producer voting in-person has failed to print his or her name and address on the In-Person Voter Registration List (Form LS–75) or if an absentee voter's name and address is not recorded on the Absentee Voter Request List (Form LS–74), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they are mutilated or marked in such a way that it cannot be determined whether the voter is voting ''yes'' or ''no.'' Spoiled ballots shall not be considered as approving or disapproving the Pork Checkoff Program, or as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

(b) *Importers.* (1) *Counting the ballots.* FSA headquarters personnel, acting on behalf of the Administrator, AMS, will check the registration forms and ballots for all importer voters against the Importer Ballot Request List (Form LS–77) to determine properly registered voters. The ballots of importers voting whose names are not recorded on the Importer Ballot Request List (Form LS–77), will be declared invalid. All ballots of importer voters declared invalid will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular office hours on the 46th business day after the date of the last day of the in-person voting period. FSA headquarter office employees will remove the sealed ''Pork Ballot'' envelope (Form LS–72–1) from the ''Pork Referendum'' envelopes (Form LS–73–1) of all eligible importer voters. After removing all ''Pork Ballot'' envelopes, FSA headquarter employees will shuffle the sealed ''Pork Ballot'' envelopes or otherwise mix them up so that ballots cannot be matched with importers' names. After shuffling the ''Pork Ballot'' envelopes, FSA headquarters employees will open the envelopes and count the ballots. The ballots will be counted as follows:

(i) Number of eligible importers casting valid ballots;

(ii) Number of importers favoring continuation of the Pork Checkoff Program;

(iii) Number of importers favoring termination of the Pork Checkoff Program;

(iv) Number of importer ballots deemed invalid; and

(v) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if an importer voter's name was not recorded on the Importer Ballot Request List (Form LS–77), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they were mutilated or marked in such a way that it cannot be determined whether the voter is voting ''yes'' or ''no.'' Spoiled ballots shall not be considered as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public can witness the opening of the ballot box and the counting of the votes but can not interfere with the process.

§ 1230.634 FSA county office report.

The FSA county office will notify the FSA State office of the results of the referendum. Each FSA county office will transmit the results of the referendum in its county to the FSA State office. Such report will include the information listed in § 1230.633. The results of the referendum in each county will be made available to the public, after the results of the referendum are announced by the Secretary. A copy of the report of results will be posted for 30 days in the FSA county office in a conspicuous place accessible to the public and a copy will be kept on file in the FSA county office for a period of at least 12 months after the referendum.

§ 1230.635 FSA State office report.

Each FSA State office will transmit to the Administrator, FSA, a written summary of the results of the referendum received from all FSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the FSA State Executive Director. The FSA State office will maintain a copy of the summary where it will be available for public inspection for a period of not less than 12 months.

§ 1230.636 Results of the referendum.

(a) The Administrator, FSA, will submit the combined results of the FSA State offices' results of the producers' vote and the FSA headquarters office results of the importers' vote to the Administrator, AMS. The Administrator, AMS, will prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum will be announced by the Department in an official press release and published in the FEDERAL REGISTER. State reports on producer balloting, FSA headquarters office report on importer balloting, and related papers will be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of producer voting results in any State or county or the report of importer voting results shall be reexamined and checked by such persons as may be designated by the Secretary.

§ 1230.637 Disposition of ballots and records.

(a) *Producer ballots and records.* Each FSA CED will place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records will be placed under lock in a safe place under the custody of the FSA CED for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, FSA, by the end of such time, the records shall be destroyed.

(b) *Importer ballots and records.* The FSA headquarters office in Washington, DC, will deliver the importers' U.S. Customs Service Form 7501s, the voter registration list, voted ballots, invalid ballots, spoiled ballots, and national summaries and records to the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA,

Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. A Marketing Programs Branch employee will place the ballots and records in sealed containers marked with the identification of the referendum. Such ballots and records will be placed under lock in a safe place under the custody of the Marketing Programs Branch for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, AMS, by the end of such time, the records shall be destroyed.

§ 1230.638 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

§ 1230.639 Additional absentee voter challenge period.

(a) *Absentee Voter Request List*. The Absentee Voter Request List (Form LS–74) will be available for inspection during an additional challenge period of five business days (October 23, 2000–October 27, 2000) at county FSA offices. The Absentee Voter Request List will be posted daily during regular office hours in a conspicuous public location at FSA county offices during the additional challenge period.

(b) *Who can challenge*. Any person can challenge a producer's vote during the period provided in paragraph (a) of this section. Any person who wants to challenge shall do so in writing and shall include the full name of the individual or corporation or other entity being challenged. Each challenge of a producer vote must be made on a separate sheet of paper and each challenge must be signed by the challenger. The identity of the challenger will be kept confidential except as the Secretary may direct or as otherwise required by law.

(c) *Who can be challenged*. Any person whose name is on the Absentee Voter Request List who was not subject to challenge during the September 19, 2000, through October 2, 2000, challenge period may be challenged. Those producers whose names were listed on the Absentee Voter Request List and who were subject to challenge because the Absentee Voter Request List indicated they had returned their ballot are not subject to challenge during this additional 5-day period.

(d) *Notification of challenges*. The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than the 2nd business day (October 31, 2000) after the last day of the additional challenge period. FSA county offices will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to FSA county offices not later than November 7, 2000.

(e) *Determination of challenges*. The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable but no later than November 9, 2000.

(f) *Challenged ballot*. A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the Administrator, AMS, after an appeal.

(g) *Appeal*. A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office not later than November 17, 2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA office or as soon as practical thereafter.

(h) *Determination of appeals*. An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day (November 28, 2000) after the date of the last day of the voting period. The Administrator, AMS, shall

send her decision on a producer's appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator's, AMS, determination on his or her appeal. The Administrator's, AMS, determination on an appeal shall be final.

[65 FR 62579, Oct. 19, 2000]

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

DEFINITIONS

Sec.
1240.1 Secretary.
1240.2 Act.
1240.3 Person.
1240.4 Honey.
1240.5 Honey products.
1240.6 Producer.
1240.7 Handle.
1240.8 Handler.
1240.9 Producer-packer.
1240.10 Importer.
1240.11 Exporter.
1240.12 Promotion.
1240.13 Research.
1240.14 Consumer education.
1240.15 Marketing.
1240.16 Committee.
1240.17 State association.
1240.18 Honey Board.
1240.19 State.
1240.20 Fiscal period and marketing year.
1240.21 Plans and projects.
1240.22 Part and subpart.

HONEY BOARD

1240.30 Establishment and membership.
1240.31 Term of office.
1240.32 Nominations.
1240.34 Vacancies.
1240.35 Procedure.
1240.36 Attendance.
1240.37 Powers.
1240.38 Duties.

RESEARCH, PROMOTION, AND CONSUMER EDUCATION

1240.39 Research, promotion, and consumer education.

EXPENSES AND ASSESSMENTS

1240.40 Budget and expenses.
1240.41 Assessments.
1240.42 Exemption from assessment.
1240.43 State assessment plan refund.
1240.44 Operating reserve.

REPORTS, BOOKS, AND RECORDS

1240.50 Reports.
1240.51 Books and records.
1240.52 Confidential treatment.

MISCELLANEOUS

1240.60 Influencing governmental action.
1240.61 Right of the Secretary.
1240.62 Suspension or termination.
1240.63 Proceedings after termination.
1240.64 Effect of termination or amendment.
1240.65 Personal liability.
1240.66 Separability.
1240.67 Patents, copyrights, inventions, product formulations, and publications.

Subpart B—General Rules and Regulations

1240.100 Terms defined.
1240.105 Definitions.
1240.106 Communications.
1240.107 Policy and objective.
1240.108 Contracts.
1240.109 Procedure.
1240.110 U.S. Department of Agriculture costs.
1240.111 First handler and producer-packer.
1240.113 Importer.
1240.114 Exemption procedures.
1240.115 Levy of assessments.
1240.116 Payment of assessments.
1240.118 Reports of disposition of exempted honey.
1240.119 Reporting period and reports.
1240.120 Retention period for records.
1240.121 Availability of records.
1240.122 Confidential books, records, and reports.
1240.123 Right of the Secretary.
1240.124 Personal liability.
1240.125 OMB control numbers.

Subpart C—Referendum Procedures

1240.200 General.
1240.201 Definitions.
1240.202 Voting.
1240.203 Instructions.
1240.204 Subagents.
1240.205 Ballots.
1240.206 Referendum report.
1240.207 Confidential information.

AUTHORITY: 7 U.S.C. 4601–4613 and 7 U.S.C. 7401.

SOURCE: 51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, unless otherwise noted.

DEFINITIONS

§ 1240.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his/her stead.

§ 1240.2 Act.

Act means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590) and any amendments thereto.

§ 1240.3 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1240.4 Honey.

Honey means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees.

§ 1240.5 Honey products.

Honey products means products wherein honey is a principal ingredient.

§ 1240.6 Producer.

Producer means any person who produces honey in any State for sale in commerce.

§ 1240.7 Handle.

Handle means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. Such term shall include selling unprocessed honey that will be consumed without further processing or packaging. Such term shall not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the handler or producer.

§ 1240.8 Handler.

Handler means any person who handles honey or honey products.

§ 1240.9 Producer-packer.

Producer-packer means any person who is both a producer and handler of honey or honey products.

§ 1240.10 Importer.

Importer means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

[56 FR 37456, Aug. 7, 1991]

§ 1240.11 Exporter.

Exporter means any person who exports honey or honey products from the United States.

[56 FR 37456, Aug. 7, 1991]

§ 1240.12 Promotion.

Promotion means any action, including paid advertising and public relations, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.13 Research.

Research means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.14 Consumer education.

Consumer education means the act of providing information to the public on the usage and care of honey and honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.15 Marketing.

Marketing means the sale or other disposition in commerce of honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.16 Committee.

Committee means or the *National Honey Nominations Committee* means the Committee established pursuant to § 1240.32.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.17 State association.

State association or *association* means that organization of beekeepers in a State which is generally recognized as representing the beekeepers of that State.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.18 Honey Board.

Honey Board or the *Board* means the administrative body established pursuant to § 1240.30.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.19 State.

State means any of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.20 Fiscal period and marketing year.

Fiscal period and *marketing year* means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.21 Plans and projects.

Plans and *projects* means those research, promotion, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.22 Part and subpart.

Part means the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the order shall be a ''subpart'' of such part.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

HONEY BOARD

§ 1240.30 Establishment and membership.

A Honey Board (hereinafter called the Board) is hereby established to administer the terms and provisions of this part. The Board shall consist of thirteen (13) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be either honey importers or exporters of which at least one member and alternate shall be an importer; one member and one alternate shall be an officer or employee of a honey marketing cooperative; and, one member and one alternate shall be selected to represent the general public. The Board shall be appointed by the Secretary from nominations submitted by the National Honey Nominations Committee, pursuant to § 1240.32.

[56 FR 37456, Aug. 7, 1991]

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except the members of the initial Board shall be designated for, and shall serve terms as follows: Four members and alternates shall serve for one-year terms; four shall serve for two-year terms; and five shall serve for three-year terms. No member or alternate shall serve more than two consecutive terms: *Provided*, That those members and alternates serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Board shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall

begin on April 1. Each member and alternate member shall continue to serve until his/her successor is selected and has accepted.

§ 1240.32 Nominations.

All nominations to the Board authorized under § 1240.30 herein shall be made in the following manner.

(a) *Establishment of National Honey Nominations Committee.* (1) There is hereby established a National Honey Nominations Committee, hereinafter called the Committee, which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State Association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, importers and exporters not exempt under sections 1240.42 (a) and (b) to make nominations for that State.

(2) If a State Association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent that State on the Committee. However, if a State which is not one of the top twenty honey producing States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(3) Members of the Committee shall serve for three-year terms, except members of the initial Committee shall serve for terms as follows: One-third of such members shall serve one-year terms; one-third shall serve two-year terms; and one-third shall serve three-year terms. No member shall serve more than two consecutive three-year terms: *Provided,* That those members serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Committee shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on January 1.

(4) The Committee shall select its Chairperson by a majority vote.

(5) The members of the Committee shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in performing their duties as members of the Committee and approved by the Board. Such expenses shall be paid from funds collected by the Board pursuant to § 1240.41.

(b) *Nominations to the Board.* (1) Except for the member and alternate who represent the general public, the Committee shall nominate the members and alternate members of the Honey Board and submit such nominations promptly to the Secretary for approval. The Committee shall also submit a list of candidates to the Secretary for the public member and alternate public member position. The Secretary may choose from that list of names or, at his/her discretion, choose other candidates to fill the public member and alternate position.

(2) After the first meeting, the Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

(3) A majority of the Committee shall constitute a quorum for voting at an annual meeting. In the event of a mail ballot, votes must be received from a majority of the Committee to constitute a quorum.

(4) At least 50 percent of the members from the twenty leading honey-producing states must vote in any nomination of members to the Board.

(5) For the purpose of nominating producer members to the Board, the Secretary shall establish seven regions on the basis of the production of honey. For the purpose of facilitating initial nominations to the Honey Board, the following regions shall be the initial regions:

Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.
Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.
Region 3: North Dakota and South Dakota.
Region 4: Minnesota, Iowa, Wisconsin, and Michigan.
Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama.
Region 6: Florida, Georgia, and Puerto Rico.
Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island,

Massachusetts, New Hampshire, Vermont, and Maine.

(6) Every five years, the Board shall review the regions to determine whether new regions should be established. In making such review, it shall give consideration to:

(i) The average quantity of honey produced during the most recent three years;

(ii) Shifts and trends in quantities of honey produced;

(iii) The equitable relationship of Board membership and districts; and

(iv) Other relevant factors.

As a result of this review, the Board may recommend for the Secretary's approval the reestablishment of such regions. Any such reestablishment of regions shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

(7) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer or as an alternate to such producer.

(8) The initial Committee shall within 90 days of the announcement of issuance of this order, or such other period as prescribed by the Secretary, submit in a manner prescribed by the Secretary the following nominations:

(i) One producer member and one alternate producer member from each of the seven regions established by the Secretary;

(ii) Two handler members and two alternate handler members from recommendations made by industry organizations representing handler interests;

(iii) Two importer members or one importer and one exporter member, and two alternate importer members or one importer and one exporter alternate member from recommendations made by industry organizations representing importer and/or exporter interests; and

(iv) One member and one alternate who are officers or employee of honey marketing cooperatives.

(v) For subsequent years, the Committee shall submit its nominations to the Secretary one month before the new Board terms begin.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991]

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant, except that if, as a result of the adjustment of the boundaries of the regions in accordance with § 1240.32(b)(6), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that he/she be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, he/she shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. At its next meeting, the Honey Nominations Committee shall nominate a replacement for said alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be nominated and appointed in the manner specified in §§ 1240.30 and 1240.32, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991]

§ 1240.35 Procedure.

(a) Seven members, including alternates acting in place of members of the Board, shall constitute a quorum; *Provided*, That such alternates shall serve only whenever the member is absent

from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, telegraph, or by other means of communication: *Provided*, That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates of any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 1240.37 Powers.

The Board shall have the following powers subject to § 1240.61:

(a) To administer this subpart in accordance with its terms and provisions of the Act;

(b) To make rules and regulations to effectuate the terms and conditions of this subpart;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1240.38 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and consultants; to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for his/her approval, a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of the order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the order.

(e) To develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of research, development, advertising, promotion, or education, and the payment of the costs thereof with funds collected pursuant to this part;

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(g) To periodically prepare and make public and to make available to producers and importers, reports of its activities carried out, and at least once each fiscal period to make public an accounting of funds received and expended;

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(i) To give to the Secretary the same notice of meetings of the Board and subcommittees as is given to members in order that representatives of the Secretary may attend such meetings;

(j) To submit to the Secretary such information pertaining to this subpart as he/she may request;

(k) To notify honey producers, producer-packers, handlers, importers, and exporters of all Board meetings through press releases or other means;

(l) To appoint and convene, from time to time, working committees

drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, and consumer education programs for honey; and

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of projects or activities to effectuate the declared purpose of the Act.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991]

RESEARCH, PROMOTION, AND CONSUMER EDUCATION

§ 1240.39 Research, promotion, and consumer education.

The Board shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate plans or projects for consumer education, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(b) The establishment and conduct of marketing research and development projects to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved or made more efficient: *Provided*, That quality control, grade standards, supply management programs, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of this subpart;

(c) The development and expansion of honey and honey product sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each plan or project authorized under this part to insure that each plan or project contributes to an effective and coordinated program of research, education, and promotion and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and consumer education, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1240.41.

EXPENSES AND ASSESSMENTS

§ 1240.40 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order, including expenses of the Committee and probable costs of research, promotion, and consumer education.

(b) The Board is authorized to incur expenses for research, promotion, and consumer education, such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary, any operating reserve established pursuant to § 1240.44, and those administrative costs incurred by the Department specified in paragraph (c) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1240.41, donations from any person not subject to assessments under this order and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained therein.

(c) The Board shall reimburse the Department from assessments for administrative costs incurred by the Department with respect to this order after its promulgation. The Department shall also be reimbursed for administrative expenses incurred by it for the conduct of referenda.

§ 1240.41 Assessments.

(a) Each producer and importer shall pay to the Board, upon demand, his/her pro rata share of such expenses as may be approved by the Secretary pursuant to § 1240.40. Such pro rata share shall be the amount established by the Secretary pursuant to paragraph (c) of this section.

(b) Except as provided in § 1240.42 and in paragraphs (e), (f), and (g) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(c) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be $0.01 per pound of honey or honey used in honey products.

(d) Should a deficit occur during any fiscal period, funds to cover the deficit may be obtained by increasing the rate of assessment subject to the limitations in paragraph (c) of this section. The increased rate of assessment shall be applied to all honey and the honey used in products wherein honey is the primary ingredient sold in the States during that particular fiscal period so that the total payments by each person during each fiscal period will be proportional to the total value of the honey and honey products sold during that period.

(e) The importer of imported honey and honey products shall pay the assessment to the Board at the time of entry of such honey and honey products into any State.

(f) Producer-packers shall pay to the Board the assessment on the honey for which they act as first handler.

(g) Whenever a loan is made on honey under the Honey Loan-Price Support Program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative that has already deducted the assessment. As soon as practicable after the assessment is deducted from the loan funds or loan deficiency payment, the Secretary shall provide the producer with proof of payment of the assessment.

(h) Should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(i) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handler, importer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(j) There shall be a late payment charge imposed on any handler, importer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, or producer-packer is liable on or before the payment due date established by the Board under paragraph (h) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(k) There shall also be imposed on any handler, importer, or producer-packer subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, or producer-packer is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary, but shall not exceed the maximum legal rate of interest, if any, as established by Congress.

(l) The Board is hereby authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers

may become liable. The Board is not obligated to pay interest on any advance payment.

(m) The Board is hereby authorized to borrow money for the payment of expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991]

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, or a producer-packer who produces and handles less than 6,000 pounds of honey per year or an importer who imports less than 6,000 pounds of honey per year on honey which such person distributes directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary, during such year shall be eligible for an exemption from the assessment.

(b) A producer or importer who consumes honey at home or donates honey to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather then sell such honey, shall be exempt from the assessment on that honey so consumed or donated, except for honey donated that is later sold in a commercial outlet by a donee or donee's assignee.

(c) To claim such exemption, a producer, producer-packer, or importer shall submit an application to the Board stating the basis on which the person claims the exemption for such year.

(d) If, after a person claims an exemption from assessments for any year under this subparagraph, and such person no longer meets the requirements of this subparagraph for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey produced or imported by such person during the year for which the person claimed the exemption.

(e) The Board may recommend to the Secretary that honey exported from the States be exempted from the provisions of this order, and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

(f) The Board shall determine those States that are operating a program with objectives comparable to the objectives of the Act and recommend to the Secretary that they be exempted from a portion of the assessments collected by the Federal program. The amount of such assessments subject to exemption shall not exceed the amount authorized by the State plan on January 1, 1985, unless a State provides evidence that it was in the process of promulgating a different assessment level on January 1, 1985, then the new assessment level promulgated will be exempt upon approval of the honey producers in that State. Producers having an exemption from a portion of the assessments under this order, due to payment of assessments to a State plan, shall be required to furnish evidence to the Board that the assessments to the State plan have been paid.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37457, Aug. 7, 1991]

§ 1240.43 State assessment plan refund.

Any State authority operating pursuant to a State assessment plan satisfying the conditions of paragraph (a) of this section may obtain a refund of assessments collected by the Board on honey and/or honey products produced in that State except as provided in paragraph (b) of this section.

(a) Refunds shall be paid only if the Secretary certifies that the State assessment plan:

(1) Is comparable to the program established under the Act and this part; and

(2) Was in existence and in operation on January 1, 1985.

(b) Refunds shall be made directly to States, and in no event shall exceed the amount collected by the Board on honey produced in the requesting State, and the amount of any refund shall be limited in accordance with the provisions of this subpart.

[56 FR 64476, Dec. 10, 1991]

§ 1240.44 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That the funds in the reserve shall not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

REPORTS, BOOKS, AND RECORDS

§ 1240.50 Reports.

Each handler, importer, or producer-packer subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For handlers or producer-packers, total quantity of honey acquired during the reporting period; total quantity handled during such period; amount of honey acquired from each producer, giving name and address of each producer; assessments collected or collectible during the reporting period; quantity of honey processed for sale from producer-packer's own production; and record of each transaction for honey on which assessment had already been paid, including statement from seller that assessment had been paid.

(b) For importers, total quantity of honey imported during the reporting period and a record of each importation of honey during such period, giving quantity, date, and port of entry.

(c) For persons who have an exemption from assessments under § 1240.42 (a) and (b), such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

[56 FR 37457, Aug. 7, 1991, as amended at 59 FR 22493, May 2, 1994]

§ 1240.51 Books and records.

Each handler, importer, producer-packer, or any person who receives an exemption from assessments shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the first period of their applicability.

[56 FR 37457, Aug. 7, 1991]

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to any order, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of the Order violated by such person.

(c) Any disclosure of any confidential information by any employee of the Board shall be considered willful misconduct.

MISCELLANEOUS

§ 1240.60 Influencing governmental action.

No funds collected by the Board under this order shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1240.62 Suspension or termination.

(a) The Secretary shall, whenever he/she finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provisions thereof.

(b) Except as otherwise provided in paragraph (c) of this section, five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of this subpart.

(c) In lieu of the first referendum otherwise required to be conducted under paragraph (b) of this section for the order in effect, the Secretary shall conduct a referendum to determine if honey producers and importers favor:

(1) Continuation of the order; and

(2) Termination of the authority for producers and importers to obtain a refund of assessments under §§ 1240.43 (a) and (b).

(d) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers and importers to determine if the honey producers and importers favor termination or suspension of this subpart.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37457, Aug. 7, 1991]

§ 1240.63 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1240.38;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

§ 1240.64 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of

any person, with respect to any such violation.

§ 1240.65 Personal liability.

No member, alternate member, or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty or willful midconduct.

§ 1240.66 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1240.67 Patents, copyrights, inventions, product formulations, and publications.

Except for a reasonable royalty paid by the Board to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the Honey Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall inure to the benefit of the Board and shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

[56 FR 37457, Aug. 7, 1991]

Subpart B—General Rules and Regulations

SOURCE: 52 FR 3103, Feb. 2, 1987, unless otherwise noted.

§ 1240.100 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Honey Research, Promotion, and Consumer Information Order. Additional terms are defined in § 1240.105.

§ 1240.105 Definitions.

(a) *Principal ingredient* means fifty-one percent or more by weight of the total ingredients contained in honey products.

(b) *First handler* means the person who first handles honey.

(c) *Order* means the Honey Research, Promotion, and Consumer Information Order which appears in this part.

(d) *United States* means the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1240.106 Communications.

Communications in connection with the Order and all rules, regulations, and supplemental Orders issued thereunder shall be addressed to the National Honey Board, 421 21st Street, Longmont, Colorado 80501–1421.

[56 FR 37458, Aug. 7, 1991]

§ 1240.107 Policy and objective.

(a) It shall be the policy of the Board to carry out an effective and continous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for honey and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the honey industry and no undue preference shall be given to any of the various industry segments.

§ 1240.108 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors

and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

§ 1240.109 Procedure.

The Organization of the Board and the procedure for conducting meetings of the Board shall be in accordance with the By-Laws of the Board.

§ 1240.110 U.S. Department of Agriculture costs.

The Board shall reimburse the U.S. Department of Agriculture (USDA) from assessments for administrative costs incurred by USDA with respect to the Order after its promulgation and for any administrative expenses incurred by USDA for the conduct of referenda. The Board shall pay those administrative costs incurred by USDA for the conduct of its duties under the Order as determined periodically by the Secretary. USDA will bill the Board quarterly and payment shall be due promptly after the billing of such costs.

§ 1240.111 First handler and producer-packer.

Persons who are first handlers or producer-packers include but are not limited to the following:

(a) When a producer delivers honey from his or her own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether he or she handles the honey for his or her own account or for the account of the producer or the account of other persons.

(b) When a producer delivers honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers honey to a commercial storage facility for the purpose of holding such honey under his or her own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer packages and sells honey of his or her own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is a producer-packer.

(e) When a producer sells unprocessed or processed honey from his or her own production directly to a commercial user or food processor who utilizes such honey as an ingredient in the manufacture of formulated products, the producer is a producer-packer.

(f) When a producer uses honey from his or her own production in the manufacture of formulated products for his or her own account and for the account of others, the producer is the producer-packer.

(g) When a producer delivers a lot of honey to a processor who processes and packages a portion of such lot of honey for his or her own account and sells the balance of the lot, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(h) When a producer supplies honey to a cooperative marketing organization which sells or markets the honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(i) When a producer uses honey from his or her own production for feeding his or her own bees, such honey is not handled at that time. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to assessment. The buyer of the honey for feeding bees is the first handler.

§ 1240.113 Importer.

Each lot of honey and honey products imported into the United States is subject to assessment under this part. Such assessment shall be paid by the importer of such honey and honey products at the time of entry or withdrawal for consumption into the United States. Any person who imports honey or honey products into the United States as principal, agent, broker, or consignee for honey produced outside the United States and imported into the United States shall be the importer.

§ 1240.114 Exemption procedures.

(a) Producers who produce, producer-packers who produce and handle, and importers who import honey and who wish to claim an exemption from assessments pursuant to §§ 1240.42 (a) and (b) should submit an application to the Board for a certificate of exemption.

(b) Upon receipt of the claim for exemption, the Board shall investigate, to the extent practicable, the request for exemption. The Board will then issue, if deemed appropriate, an exemption certificate to each person who is eligible to receive one.

(c) The Secretary, upon recommendation by the Board, may exempt that portion of assessments collected under a qualified State plan; *Provided*, That the State plan meets all of the requirements in § 1240.42(d) of the Order.

(1) First handlers collecting assessments from producers for the State plan and the Board shall forward that portion of assessments collected under the order in excess of the State assessment to the Board.

(2) Upon request of the Board, producers having an exemption from a portion of the assessments under this Order due to payment of assessments under a State plan, shall be required to furnish evidence to the Board that the assessments to the State have been paid.

[52 FR 3103, Feb. 2, 1987, as amended at 56 FR 37458, Aug. 7, 1991; 59 FR 22493, May 2, 1994]

§ 1240.115 Levy of assessments.

(a) *Time of payment*. The assessment shall become due at the time assessable honey is first handled or entered or withdrawn for consumption into the United States pursuant to this part.

(b) An assessment of one cent per pound is levied on honey produced in the United States, on imported honey entered or withdrawn for consumption into the United States, and on honey used in imported honey products entered or withdrawn for consumption into the United States except that assessments shall not be levied on the following:

(1) Any persons other than importers holding a valid exemption certificate during the twelve month period ending on December 31;

(2) That portion of honey which does not enter the current of commerce which is utilized solely to sustain a producers or producer-packer's own colonies of bees;

(3) That portion of otherwise assessable honey which is contained in imported products wherein honey is not a principal ingredient. Honey subject to assessment shall be assessed only once.

(c) The assessment on each lot of honey handled in the United States shall be paid by the first handler who handles, or by the producer-packer who produces and handles such honey.

(1) The first handler shall collect and pay assessments to the Board unless such handler has received documentation acceptable to the Board that the assessment has been previously paid.

(2) A producer-packer shall pay, or collect and pay, assessments to the Board unless—

(i) Such producer-packer has obtained an exemption from the Board applicable to the honey which that producer-packer produced or produced and handled; or

(ii) Has received documentation acceptable to the Board that the assessment has been previously paid.

(d) Assessments shall be levied with respect to honey pledged as collateral for a loan or loan deficiency payment under the Commodity Credit Corporation (CCC) Honey Price Support Program in accordance with an agreement entered into between the Honey Board and the CCC. The assessment will be deducted from the proceeds of the loan or loan deficiency payment by the CCC and forwarded to the Board, except that the assessment shall not be deducted in the case of a honey marketing cooperative that has already deducted the assessment or that portion of the assessment paid to a qualified State plan exempted by the Board. The Secretary, through the CCC, shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds or loan deficiency payment promptly after each occasion when an assessment is deducted from any such loan funds or payment under this subsection.

(e) The U.S. Customs Service (USCS) will collect assessments on all honey or honey products where honey is the

principal ingredient imported under its tariff schedule (HTS heading numbers 0409.00.00 and 2106.90.9988) at the time of entry or withdrawal for consumption and forward such assessment as per the agreement between the USCS and USDA. Any importer or agent who is exempt from payment of assessments pursuant to §1240.42 (a) and (b) of the Order may apply to the Board for reimbursement of such assessment paid.

(f) A late payment charge shall be imposed on any handler, producer-packer, or importer except as otherwise authorized by the Board, who fails to pay to the Board within the time prescribed in this subpart the total amount of assessment due for which any such handler, importer, or producer-packer is liable. Fifteen days after the assessment becomes due a one-time late payment charge of 10 percent will be added to any outstanding funds due the Board.

(g) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance except as otherwise authorized by the Board, will be added to any accounts delinquent over 30 days and will continue monthly until the outstanding balance is paid to the Board.

[52 FR 3103, Feb. 2, 1987, as amended at 53 FR 37731, Sept. 28, 1988; 56 FR 37458, Aug. 7, 1991; 61 FR 29462, June 11, 1996; 61 FR 38356, July 24, 1996]

§1240.116 Payment of assessments.

(a) Responsibility for payment. Unless otherwise authorized by the Board under the Act and Order, the first handler or producer-packer shall collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose honey the assessment is made, and remit the assessments to the Board. The first handler or producer-packer shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable to the Board. Failure of the handler or producer-packer to collect or deduct such assessment does not relieve the handler or producer-packer of his or her obligation to remit the assessment to the Board. However, should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board. Assessments on imported honey and honey products shall be collected as specified in §1240.115(e); *Provided*, That importers shall be responsible for payment of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(b) *Payment directly to the Board*. Except as provided in paragraph (c) of this section, each first handler and producer-packer shall pay the required assessment pursuant to §1240.41 of the Order directly to the Board at the address referenced in §1240.106, for each reporting period specified in §1240.119, on or before the 15th day following the end of such period. Payment shall be in the form of a check, draft, or money order payable to the Board and shall be accompanied by a report on Board forms pursuant to §1240.50.

(c) *Prepayment of assessment*. (1) In lieu of the monthly assessment payment specified in §1240.119 of this subpart, the Board may permit first handlers or producer-packers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable honey.

(2) Persons using such procedure shall provide a monthly accounting of actual handling and assessments.

(3) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency*. The Board may enter into agreements subject to approval of the Secretary authorizing other organizations to collect assessments in its behalf. All such agreements are subject to the requirements of the Act, Order, and all applicable rules and regulations under the Act and the Order.

[52 FR 3103, Feb. 2, 1987, as amended at 56 FR 37458, Aug. 7, 1991]

§ 1240.118 Reports of disposition of exempted honey.

The Board may require reports by first handlers, producer-packers, importers, or any persons who receive an exemption from assessments under § 1240.42 (a) and (b) on the handling and disposition of exempted honey. Also, authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

[56 FR 37458, Aug. 7, 1991]

§ 1240.119 Reporting period and reports.

(a) For the purpose of the payment of assessments, a calendar month shall be considered the reporting period; however, other accounting periods may be used when registered with and approved by the Board in writing.

(b) Pursuant to § 1240.50 of the Order, handlers and producer-packers shall file with the Board a report for each reporting period.

(1) All reports shall contain at least the following information:

(i) The handler's or producer-packer's name and address;

(ii) Date of report (which is also date of payment to the Board);

(iii) Period covered by report; and

(iv) Total quantity of honey determined as assessable during the reporting period.

(2) Handlers or producer-packers who collect assessments from producers or withhold assessments for their accounts or pay the assessments themselves shall also include with each report a list of all such producers whose honey was handled during the period, their addresses, and to total assessable quantities handled for each such producer.

(c) Each importer shall file with the Board a monthly report containing at least the following information:

(1) The importer's name and address.

(2) The quantity of honey and honey products entered or withdrawn for consumption into the United States.

(3) The amount of assessment paid on honey and honey products entered or withdrawn for consumption into the United States to the U.S. Customs Service at the time of entry or withdrawal for consumption.

(4) The amount of any honey and honey products on which the assessment was not paid to the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(d) In the event of a first handler's, producer-packer's, or importer's death, bankruptcy, receivership, or incapacity to act, the representative of the handler, producer-packer, or importer or his or her estate, shall be considered the first handler, producer-packer, or importer for the purposes of this part.

§ 1240.120 Retention period for records.

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under §§ 1240.42 (a) and (b) required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability: One copy of each report made to the Board, records of all exempt producers, producer-packers, and importers including certification of exemption as necessary to verify the address of such exempt person and such records as are necessary to verify such reports.

[56 FR 37458, Aug. 7, 1991]

§ 1240.121 Availability of records.

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under §§ 1240.42 (a) and (b) and is required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

[56 FR 37458, Aug. 7, 1991]

§ 1240.122 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers, producer-packers, importers or any persons who receive an exemption from assessments under § 1240.42 (a) and (b)

and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

[56 FR 37458, Aug. 7, 1991]

§ 1240.123 Right of the Secretary.

All fiscal matters, programs, projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1240.124 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1240.125 OMB control numbers.

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511, are as follows: OMB Number 0581–0093, except Board member nominee information sheets which are assigned OMB Number 0505–0001.

[56 FR 37458, Aug. 7, 1991]

Subpart C—Referendum Procedures

SOURCE: 65 FR 48321, Aug. 7, 2000, unless othewise noted.

§ 1240.200 General.

Referenda to determine whether eligible producers, importers, and, in the case of an order assessing handlers, handlers favor the continuation, suspension, termination, or amendment of the Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1240.201 Definitions.

(a) *Act* means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590; 98 Stat. 3115; enacted October 30, 1984; 7 U.S.C. 4601–4613, as amended) and any amendments thereto.

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(c) *Board* or *National Honey Board* means the Honey Board, the administrative body provided for under section 7(c) of the Act and established under § 1240.30.

(d) *Department* means the United States Department of Agriculture.

(e) *Eligible handler* means any person defined as a handler or producer-packer in the Order, or importer in this subpart, who handles domestic honey or honey products, and is covered by an order and subject to assessment on domestic honey handled during the representative period.

(f) *Eligible importer* means any person defined as an importer in this subpart, who is engaged in the importation of honey or honey products, and is subject to pay assessments to the Board on honey or honey products imported during the representative period.

(g) *Eligible producer* means any person defined as a producer or producer-packer in the Order who produces honey and is subject to pay assessments to the Board on such honey produced during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced;

(2) Rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the honey produced;

(3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced; or

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to

produce honey who share the risk of loss and receive a share of the honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(h) *Importer* means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed as the importer of record for such honey or honey products.

(i) *Order* means the Honey Research, Promotion, and Consumer Information Order.

(j) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called *joint ventures* wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of honey or honey products for market and the authority to transfer title to the honey or honey products so produced, handled or imported.

(k) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(l) *Representative period* means the period designated by the Secretary pursuant to the Act.

(m) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1240.202 Voting.

(a) *Eligibility*. (1) Each person who is, as defined in this subpart, an eligible producer; an eligible importer; or, in the case of an order assessing handlers, an eligible handler shall be entitled to vote in the referendum.

(2) In conducting a referendum for the sole purpose of determining whether persons favor the implementation of amendments to the Order in accordance with changes to the Act made by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185, enacted June 23, 1998), producer-packers, importers, and handlers shall be allowed to vote as if:

(i) The proposed amendments to the Order were in place during the representative period; and

(ii) They were subject to assessment based on the quantity of honey or honey products handled during the representative period.

(b) *Number of ballots cast*. (1) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum: *Provided*, That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey and/or honey products, in which more than one of the parties is a producer, shall be entitled to cast one ballot covering only such producer's share of the ownership.

(2) In the case of an order assessing handlers, each person who is an eligible handler, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum.

(3) Each person who is a producer-packer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast one ballot as an eligible producer and, in the case of an order assessing handlers, one ballot as an eligible handler.

(4) Each importer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast in the referendum one ballot as an importer and,

in the case of an order assessing handlers, one ballot as an eligible handler.

(c) *Proxy voting*. Proxy voting is not authorized, but an officer or employee of an eligible corporate producer; importer; and, in the case of an order assessing handlers, handler; or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that they are an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(d) *Casting of ballots*. All ballots are to be cast by mail as instructed by the Secretary.

§ 1240.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter; and

(2) The quantity of honey or honey products produced, imported, and, in the case of an order assessing handlers, handled.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the voting period, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as said agent may deem advisable.

(d) Mail to eligible producers, importers, and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1240.204 Subagents.

The referendum agent may appoint any individual or individuals necessary to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1240.205 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, why the ballot was questioned, the results of any investigation made with respect to the questionable ballot, and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

§ 1240.206 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, the number of ballots cast, the number of valid ballots, and other information pertinent to analysis of the referendum and its results.

§ 1240.207 Confidential information.

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of honey or honey products shall be held strictly confidential and shall not be disclosed.

PART 1250—EGG RESEARCH AND PROMOTION

Subpart—Egg Research and Promotion Order

DEFINITIONS

Sec.
1250.301 Secretary.
1250.302 Act.
1250.303 Fiscal period.
1250.304 Egg Board or Board.
1250.305 Egg producer or producer.
1250.306 Commercial eggs or eggs.
1250.307 Person.
1250.308 United States.
1250.309 Handler.
1250.310 Promotion.
1250.311 Research.
1250.312 Marketing.
1250.313 Eligible organization.
1250.314 Plans and projects.
1250.315 Part and subpart.
1250.316 Representative of a producer.

EGG BOARD

1250.326 Establishment and membership.
1250.327 Term of office.
1250.328 Nominations.
1250.329 Selection.
1250.330 Acceptance.
1250.331 Vacancies.
1250.332 Alternate members.
1250.333 Procedure.
1250.334 Compensation and reimbursement.
1250.335 Powers of the Board.
1250.336 Duties.

RESEARCH, EDUCATION, AND PROMOTION

1250.341 Research, education, and promotion.

EXPENSES AND ASSESSMENTS

1250.346 Expenses.
1250.347 Assessments.
1250.348 Exemptions.
1250.349 Collecting handlers and collection.
1250.350 [Reserved]
1250.351 Influencing governmental action.

REPORTS, BOOKS, AND RECORDS

1250.352 Reports.
1250.353 Books and records.
1250.354 Confidential treatment.

CERTIFICATION OF ORGANIZATIONS

1250.356 Certification of organizations.

MISCELLANEOUS

1250.357 Suspension and termination.
1250.358 Proceedings after termination.
1250.359 Effect of termination or amendment.
1250.360 [Reserved]
1250.361 Right of the Secretary.
1250.362 Amendments.
1250.363 Separability.

Subpart—Rules and Regulations

DEFINITIONS

1250.500 Terms defined.

OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

1250.501 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

GENERAL

1250.505 Communications.
1250.506 Policy and objective.
1250.507 Contracts.
1250.508 Procedure.
1250.509 USDA costs.
1250.510 Determination of Board membership.

ASSESSMENTS, COLLECTIONS, AND REMITTANCES

1250.514 Levy of assessments.
1250.515 Reporting period and payment.
1250.516 Collecting handlers and collection.
1250.517 Remittance to Egg Board.
1250.518 Receipts for payment of assessments.
1250.519 Late-payment charge.

REGISTRATION, CERTIFICATION, AND REPORTS

1250.528 Registration of collecting handlers.
1250.529 Reports.
1250.530 Certification of exempt producers.

RECORDS

1250.535 Retention of records.
1250.536 Availability of records.
1250.537 Confidentiality.

PATENTS, COPYRIGHTS, TRADEMARKS, AND INFORMATION

1250.542 Patents, copyrights, trademarks, and information.

PERSONAL LIABILITY

1250.547 Personal liability.

AUTHORITY: 7 U.S.C. 2701–2718.

Subpart—Egg Research and Promotion Order

SOURCE: 40 FR 59190, Dec. 22, 1975, unless otherwise noted.

DEFINITIONS

§ 1250.301 Secretary.

Secretary means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

§ 1250.302 Act.

Act means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93–428).

§ 1250.303 Fiscal period.

Fiscal period means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

§ 1250.304 Egg Board or Board.

Egg Board or *Board* or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

§ 1250.305 Egg producer or producer.

Egg producer or *producer* means any person who either:

(a) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(b) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual argeement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

§ 1250.306 Commercial eggs or eggs.

Commercial eggs or *eggs* means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

§ 1250.307 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1250.308 United States.

United States means the 48 contiguous States of the United States of America and the District of Columbia.

§ 1250.309 Handler.

Handler means any person who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets, such eggs, including eggs of his own production.

§ 1250.310 Promotion.

Promotion means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

§ 1250.311 Research.

Research means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

§ 1250.312 Marketing.

Marketing means the sale or other disposition of commercial eggs, egg

products, spent fowl, or products of spent fowl in any channel of commerce.

§ 1250.313 Eligible organization.

Eligible organization means any organization, association, or cooperative which represents egg producers of any egg producing area of the United States certified by the Secretary pursuant to § 1250.356.

§ 1250.314 Plans and projects.

Plans and *projects* means those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to § 1250.341.

§ 1250.315 Part and subpart.

Part means the Egg Research and Promotion Order and all rules, regulations, and supplemental order issued pursuant to the act and the order. ''Subpart'' refers to the aforesaid order or any other portion or segment of this part.

§ 1250.316 Representative of a producer.

Representative of a producer means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

EGG BOARD

§ 1250.326 Establishment and membership.

There is hereby established an Egg Board, hereinafter called the ''Board,'' composed of 18 egg producers or representatives of egg producers, and 18 specific alternates, all appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives, or by other producers pursuant to § 1250.328.

§ 1250.327 Term of office.

The members of the Board, and their alternates, shall serve for terms of 2 years, except initial appointments shall be, proportionately, for terms of 2 and 3 years. Each member and alternate member shall continue to serve until his successor is appointed by the Secretary and has qualified. No member shall serve for more than three consecutive terms.

§ 1250.328 Nominations.

All nominations authorized under § 1250.326 shall be made in the following manner:

(a) Within 30 days of the approval of this order by referendum, nominations shall be submitted to the Secretary for each geographic area as specified in paragraph (d) of this section by eligible organizations, associations, or cooperatives certified pursuant to § 1250.356, or, if the Secretary determines that a substantial number of egg producers are not members of, or their interests are not represented by, any such eligible organization, association, or cooperative, then from nominations made by such egg producers in the manner authorized by the Secretary;

(b) After the establishment of the initial Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board;

(c) Where there is more than one eligible organization, association, or cooperative within each geographic area, as defined by the Secretary, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary two nominations for each appointment to be made;

(d) The number of members of the initial Board, and their alternates, who shall be appointed from each area are: Area 1–3, Area 2–4, Area 3–2, Area 4–2, Area 5–4, and Area 6–3, for a total of 18 members from all areas. Changes to the Board as provided in paragraph (e) of this section shall be accomplished by determining the percentage of United States egg production in each area times 18 (total Board membership) and rounding to the nearest whole number; and

(e) After the establishment of the initial Board, the area grouping of the 48 contiguous States of the United States, including the area distribution of the 18 members of the Board and their alternates, shall be reviewed at any time not to exceed 5 years by the Board, or by a person or agency designated by the Board to perform such review, and the results shall be reported to the Secretary along with any recommendations by the Board regarding whether the delineation of the areas and the area distribution of the Board should continue without any change, or whether changes should be made in either the areas or the number of Board members to be appointed from each area, providing that each area shall be represented by not less than one Board member and any action recommended shall be subject to the approval of the Secretary.

[40 FR 59190, Dec. 22, 1975, as amended at 60 FR 66861, Dec. 27, 1995]

§ 1250.329 Selection.

From the nominations made pursuant to § 1250.328, the Secretary shall appoint the members of the Board, and an alternate for each such member, on the basis of representations provided for in § 1250.326, § 1250.327, and § 1250.328.

§ 1250.330 Acceptance.

Any person appointed by the Secretary as a member, or as an alternate member, of the Board shall qualify by filing a written acceptance with the Secretary within a period of time prescribed by the Secretary.

§ 1250.331 Vacancies.

To fill any vacancy occasioned by the failure to qualify of any person appointed as a member, or as an alternate member, of the Board, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated, qualified, and appointed in the manner specified in § 1250.326, § 1250.328(b), § 1250.329, and § 1250.330, except that replacement of a Board member, or alternate, with an unexpired term of less than 6 months is not necessary.

§ 1250.332 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is appointed and qualified.

§ 1250.333 Procedure.

(a) A majority of the members, including alternates acting for members of the Board, shall constitute a quorum, and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing.

§ 1250.334 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

§ 1250.335 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 1250.336 Duties.

The Board shall have the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, to adopt such rules for the conduct of its business as it may deem advisable, and it may establish advisory committees of persons other than Board members;

(b) To appoint or employ such persons as it may deem necessary and to define the duties and determine the compensation of each;

(c) To prepare and submit to the Secretary for his approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable cost of plans and projects as estimated in the budget or budgets submitted to it by prospective contractors, with the Board's recommendations with respect thereto. In preparing a budget for each of the 1994 and subsequent fiscal years, the Board shall, to the maximum extent practicable, allocate a proportion of funds for research projects comparable to the proportion of funds allocated for research projects in the Board's fiscal year 1993 budget.

(d) With the approval of the Secretary, to enter into contracts or agreements with persons, including, but not limited to, State, regional, or national agencies or State, regional, or national egg organizations which administer research, education, or promotion programs, advertising agencies, public relations firms, public or private research organizations, advertising and promotion media, and egg producer organizations, for the development and submission to it of plans and projects authorized by § 1250.341 and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of the cost thereof with funds collected pursuant to § 1250.347. Any such contracts or agreements shall provide that such contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contractor shall keep accurate records of all of its transactions and make periodic reports to the Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

(e) To review and submit to the Secretary any plans or projects which have been developed and submitted to it by the prospective contractor, together with its recommendations with respect to the approval thereof by the Secretary;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g)–(h) [Reserved]

(i) To prepare and make public, at least annually, a report of activities carried out and an accounting for funds received and expended;

(j) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board as is given to members in order that he or his representative may attend such meetings;

(l) To act as an intermediary between the Secretary and any producer or handler; and

(m) To submit to the Secretary such information pursuant to this subpart as he may request.

[40 FR 59190, Dec. 22, 1975, as amended at 54 FR 99, Jan. 4, 1989, and 54 FR 11493, Mar. 21, 1989; 54 FR 12310, Mar. 24, 1989; 59 FR 38876, Aug. 1, 1994; 60 FR 66861, Dec. 27, 1995]

RESEARCH, EDUCATION, AND PROMOTION

§ 1250.341 Research, education, and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising, sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl: *Provided, however*, That any such program or project shall be directed towards increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl;

(b) The establishment and carrying on of research, marketing, and development projects and studies with respect to sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof in accordance with section 7(b) of the act, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved, or made more acceptable, and the data collected by such activities may be disseminated;

(c) The development and expansion of foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl;

(d) Each program or project authorized under paragraphs (a), (b), and (c) of this section shall be periodically reviewed or evaluated by the Board to insure that each such program or project contributes to a coordinated national program of research, education, and promotion contributing to the maintenance of markets and for the development of new markets for and of new products from eggs, egg products, spent fowl, and products of spent fowl. If it is found by the Board that any such program or project does not further the national purpose of the act, then the Board shall terminate such program or project; and

(e) No advertising or promotion programs shall use false or unwarranted claims or make any reference to private brand names of eggs, egg products, spent fowl, and products of spent fowl or use unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

EXPENSES AND ASSESSMENTS

§ 1250.346 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. The total costs incurred by the Board for a fiscal period in collecting producer assessments and having an administrative staff shall not exceed an amount of the projected total assessments to be collected by the Board for such fiscal period that the Secretary determines to be reasonable. The funds to cover such expenses shall be paid from assessments received pursuant to § 1250.347.

[40 FR 59190, Dec. 22, 1975, as amended at 54 FR 100, Jan. 4, 1989, and 54 FR 11493, Mar. 21, 1989]

§ 1250.347 Assessments.

Each handler designated in § 1250.349 and pursuant to regulations issued by the Board shall collect from each producer, except for those producers specifically exempted in § 1250.348, and shall pay to the Board at such times and in such manner as prescribed by regulations issued by the Board an assessment at a rate not to exceed 10 cents per 30-dozen case of eggs, or the equivalent thereof, for such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after this subpart is effective, as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs.

[59 FR 64560, Dec. 15, 1994]

§ 1250.348 Exemptions.

The following shall be exempt from the specific provisions of the Act:

(a) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period

immediately prior to the date assessments are due and payable has not exceeded 75,000 laying hens. The aggregate number of laying hens owned by a trust or similar entity shall be considered ownership by the beneficiaries of the trust or other entity. Ownership of laying hens by an egg producer also shall include the following:

(1) In cases in which the producer is an individual, laying hens owned by such producer or members of such producer's family that are effectively under the control of such producer, as determined by the Secretary;

(2) In cases in which the producer is a general partnership or similar entity, laying hens owned by the entity and all partners or equity participants in the entity; and

(3) In cases in which the producer holds 50 percent or more of the stock or other beneficial interest in a corporation, joint stock company, association, cooperative, limited partnership, or other similar entity, laying hens owned by the entity. Stock or other beneficial interest in an entity that is held by the following shall be considered as held by the producer:

(i) Members of the producer's family described in paragraph (a)(1);

(ii) A general partnership or similar entity in which the producer is a partner or equity participant;

(iii) The partners or equity participants in an entity of the type described in (a)(3)(ii); or

(iv) A corporation, joint stock company, association, cooperative, limited partnership, or other similar entity in which the producer holds 50 percent or more of the stock or other beneficial interests.

(b) Any egg producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

(c) In order to qualify for exemption from the provisions of the Act under this section, producers claiming such exemption must comply with § 1250.530 regarding certification of exempt producers and other such regulations as may be prescribed by the Secretary as a condition to exemption from the provisions of the Act under this section.

[55 FR 6973, Feb. 28, 1990, as amended at 59 FR 38876, Aug. 1, 1994]

§ 1250.349 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessment specified in § 1250.347 shall be any one of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309,

(2) A producer who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309 for eggs of his own production, or

(3) Such other persons as designated by the Board under rules and regulations issued pursuant to this subpart.

(b) Handlers shall collect and remit to the Egg Board all assessments collected in the manner and in the time specified by the Board pursuant to rules and regulations issued by the Board.

(c) Handlers shall maintain such records as the Egg Board may prescribe pursuant to rules and regulations issued by the Board.

(d) The Board with the approval of the Secretary may authorize other organizations or agencies to collect assessments in its behalf.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.350 [Reserved]

§ 1250.351 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except to recommend to the Secretary amendments to this subpart.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

REPORTS, BOOKS, AND RECORDS

§ 1250.352 Reports.

Each handler subject to this subpart and other persons subject to section 7(c) of the act may be required to report to the Board periodically such information as is required by regulations and will effectuate the purposes of the act, which information may include but not be limited to the following:

(a) Number of cases of eggs handled;

(b) Number of cases of eggs on which an assessment was collected;

(c) Name and address of person from whom any assessment was collected; and

(d) Date collection of assessment was made on each case of eggs handled.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.353 Books and records.

Each handler subject to this subpart and persons subject to section 7(c) of the act shall maintain and make available for inspection by the Board or the Secretary such books and records as are necessary to carry out the provisions of the subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.354 Confidential treatment.

(a) All information obtained from such books, records, or reports shall be kept confidential by all officers and employees of the Department of Agriculture and the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary, or to which the Secretary or any officer of the United States is a party and involving this subpart. Nothing in this paragraph shall be deemed to prohibit (1) the issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person, (2) the publication, by direction of the Secretary, of general statements relating to refunds made by the Egg Board during any specific period of time, or (3) the publication, by direction of the Secretary, of the name of any person violating this subpart together with a statement of the particular provisions of this subpart violated by such person.

(b) All information with respect to refunds, except as provided in paragraph (a)(2) of this section, made to individual producers shall be kept confidential by all officers and employees of the Department of Agriculture and the Board.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

CERTIFICATION OF ORGANIZATIONS

§ 1250.356 Certification of organizations.

Any organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members on the Board to represent the geographic area in which the organization represents egg producers. Such eligibility shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership;

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in such State(s);

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of the act.

The primary consideration in determining the eligibility of an organization shall be whether its egg producer membership consists of a substantial number of egg producers who produce a substantial volume of the applicable geographic area's commercial eggs to

reasonably warrant its participation in the nomination of members for the Board or to request the issuance of an order. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final.

MISCELLANEOUS

§ 1250.357 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of egg producers voting in the referendum approving this subpart, to determine whether egg producers favor the termination or suspension of this subpart, and the Secretary shall suspend or terminate such subpart at the end of 6 months after he determines that suspension or termination of the subpart is approved or favored by a majority of the egg producers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, and who produced more than 50 percent of the volume of eggs produced by the egg producers voting in the referendum.

§ 1250.358 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than six of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary, (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1250.336, (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct, and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the research or promotion programs hitherto authorized.

§ 1250.359 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued hereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1250.360 [Reserved]

§ 1250.361 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and

prepared by the Board shall be submitted to the Secretary for his approval.

§ 1250.362 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by an organization certified pursuant to section 16 of the act, or by any interested person affected by the provisions of the act, including the Secretary.

§ 1250.363 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Rules and Regulations

SOURCE: 41 FR 22925, June 8, 1976, unless otherwise noted.

DEFINITIONS

§ 1250.500 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall be those definitions of terms defined in the Egg Research and Consumer Information Act, hereinafter called the Act, and the Egg Research and Promotion Order, hereinafter called the Order.

(a) *Act*. ''Act'' means the Egg Research and Consumer Information Act as it may be amended (Pub. L. 93–428).

(b) *Secretary*. ''Secretary'' means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(c) *Egg Board or Board*. ''Egg Board'' or ''Board'' or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

(d) *Fiscal period*. ''Fiscal period'' means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

(e) *Egg producer or producer*. ''Egg producer'' or ''producer'' means any person who either:

(1) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(2) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

(f) *Commercial eggs or eggs*. ''Commercial eggs'' or ''eggs'' means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

(g) *Person*. ''Person'' means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(h) *Handle*. ''Handle'' means to grade, carton, process, transport, purchase, or in any way place eggs or cause eggs to be placed in the current of commerce. Such term shall not include the washing, the packing in cases, or the delivery by the producer of his own nest run eggs.

(i) *Handler*. ''Handler'' means any person who receives or otherwise acquires eggs from an egg producer, and

processes, prepares for marketing, or markets such eggs, including eggs of his own production.

(j) *Egg products*. ''Egg products'' means products produced, in whole or in part, from eggs.

(k) *Cooperating agency*. ''Cooperating agency'' means any person with which the Egg Board has entered into an agreement pursuant to § 1250.517(c).

(l) *Case*. ''Case'' means the standard shipping package containing 30-dozen eggs or the equivalent thereof.

(m) *Plans and projects*. ''Plans'' and ''projects'' mean those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to § 1250.341.

(n) *Representative of a producer*. ''Representative of a producer'' means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

(o) *Hen or laying hen*. ''Hen'' or ''laying hen'' means a domesticated female chicken 20 weeks of age or over, raised primarily for the production of commercial eggs.

(p) *Hatching eggs*. ''Hatching eggs'' means eggs intended for use by hatcheries for the production of baby chicks.

(q) *United States*. ''United States'' means the 48 contiguous States of the United States of America and the District of Columbia.

(r) *Promotion*. ''Promotion'' means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(s) *Research*. ''Research'' means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

(t) *Consumer education*. ''Consumer education'' means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(u) *Marketing*. ''Marketing'' means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl, in any channel of commerce.

(v) *Commerce*. ''Commerce'' means interstate, foreign, or intrastate commerce.

(w) *Spent fowl*. ''Spent fowl'' means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

(x) *Products of spent fowl*. ''Products of spent fowl'' means commercial products produced from spent fowl.

(y) *Started pullet*. ''Started pullet'' means a hen less than 20 weeks of age.

(z) *Shell egg packer*. ''Shell egg packer'' means any person grading eggs into their various qualities.

(aa) *Egg breaker*. ''Egg breaker'' means any person subject to the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) engaged in the breaking of shell eggs or otherwise involved in preparing shell eggs for use as egg products.

(bb) *Nest run eggs*. ''Nest run eggs'' means eggs which are packed as they come from the production facilities without having been sized and/or candled with the exception that some checks, dirties, or obvious undergrades may have been removed and provided further that the eggs may have been washed.

OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

§ 1250.501 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose*. This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR part 1250 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

(b) *Display*.

7 CFR section where identified and described	Current OMB control number
Sec.:	
1250.523	0581–0098
1250.528	0581–0098
1250.529	0581–0098
1250.530	0581–0098
1250.535	0581–0098

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) and Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701–2718))

[48 FR 56566, Dec. 22, 1983]

GENERAL

§ 1250.505 Communications.

Communications in connection with the Order shall be addressed to the Egg Board at its business address.

§ 1250.506 Policy and objective.

(a) It shall be the policy of the Egg Board to carry out an effective and continuous coordinated program of research, consumer and producer education, advertising, and promotion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl of the United States.

(b) It shall be the objective of the Egg Board to carry out programs and projects which will provide maximum benefit to the egg industry and no undue preference shall be given to any of the various industry segments.

§ 1250.507 Contracts.

The Egg Board, with the approval of the Secretary, may enter into contracts with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of the Order, this subpart, and applicable provisions of the U.S. Code relative to contracting with the U.S. Department of Agriculture. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Egg Board shall be subject to the provisions of this subpart.

§ 1250.508 Procedure.

The organization of the Egg Board and the procedure for conducting meetings of the Board shall be in accordance with the By-Laws of the Board.

§ 1250.509 USDA costs.

Pursuant to § 1250.347 of the Order, the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Order as determined periodically by the Secretary. Payment shall be due promptly after the billing for such costs.

§ 1250.510 Determination of Board membership.

(a) Pursuant to § 1250.328 (d) and (e) of the Order, the 48 contiguous States of the United States shall be grouped into 6 geographic areas, as follows:

Area 1 (North Atlantic States)—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia;

Area 2 (South Atlantic States)—Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee;

Area 3 (East North Central States)—Indiana, Michigan, and Ohio;

Area 4 (West North Central States)—Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin;

Area 5 (South Central States)—Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas;

Area 6 (Western States)—Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(b) Board representation among the 6 geographic areas is apportioned to reflect the percentage of United States egg production in each area times 18 (total Board membership). The number of members of the Board, beginning with the 1995–96 term, are: Area 1—3, Area 2—3, Area 3—3, Area 4—3, Area 5—3, Area 6—3. Each member will have an alternate appointed from the same area.

[59 FR 12155, Mar. 16, 1994]

ASSESSMENTS, COLLECTIONS, AND REMITTANCES

§ 1250.514 Levy of assessments.

An assessment rate of 10 cents per case of commercial eggs is levied on each case of commercial eggs handled for the account of each producer. Each

case of commercial eggs shall be subject to assessment only once. Producers meeting the requirements of § 1250.348 are exempt from the provisions of the Act including this section.

[55 FR 6974, Feb. 28, 1990, as amended at 59 FR 64560, Dec. 15, 1994]

§ 1250.515 Reporting period and payment.

(a) For the purpose of the payment of assessments, either a calendar month or a 4-week accounting period shall be considered the reporting period; however, other accounting periods may be used when approved by the Board on an individual basis. Each collecting handler shall register his reporting period with the Board. All changes in reporting periods shall be requested in writing and subject to approval by the Board.

(b) Each producer shall pay the required assessment on his commercial eggs pursuant to § 1250.514 to the collecting handler designated in § 1250.516 on or before the date of final settlement between the producer and the collecting handler for the eggs received by the collecting handler during each reporting period.

§ 1250.516 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessments shall be any of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, or breaks such eggs. Such shell egg breaker or egg packer must collect and remit to the Board the assessments on all eggs handled except eggs for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(2) A person who buys or receives nest run eggs from a producer and who does not grade, carton, or break such eggs. Such person shall collect the assessment from the producer and remit to the Egg Board on all such eggs, except for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(3) Except as otherwise provided in paragraph (a)(4) of this section, a producer who grades, cartons, or breaks eggs of his own production shall be responsible for remitting the assessment to the Board on all eggs produced. This would include the eggs which he grades, cartons, or breaks as well as the nest run eggs which are graded, cartoned, or broken by another handler. Such a producer who remits the assessment on nest run eggs to the Board shall provide the handler specified in paragraph (a) (1) or (2) of this section with a written statement that the assessment has already been paid on the nest run eggs; or

(4) Upon approval of the Board, any person who handles eggs for a producer under a written contract that includes express provisions that said handler will remit the assessment on such eggs to the Board shall be the collecting handler notwithstanding the fact that the producer may have graded, cartoned, or otherwise processed the eggs.

Following are some examples to aid in identification of collecting handlers:

(i) Producer sells, assigns, consigns, or otherwise delivers nest run eggs of his own production to a shell egg packer or breaker for preparation for market—the shell egg packer or breaker is the collecting handler and is responsible for remitting to the Egg Board;

(ii) Producer grades, cartons, breaks, or otherwise prepares for marketing a portion of the eggs of his own production and delivers the remaining portion of his nest run eggs to a shell egg packer or breaker—the producer is the collecting handler and shall remit the assessment on his total production to the Board;

(iii) Producer sells all or a portion of his eggs in nest run form to a handler who is not a shell egg packer or breaker—the handler is responsible for collecting the assessment and remitting it to the Egg Board except for eggs covered by a statement indicating that an assessment has already been paid;

(iv) A shell egg packer or breaker who buys or receives nest run eggs from a handler who is not a shell egg packer or breaker—the handler is the collecting handler and shall remit such assessment to the Board;

(v) A shell egg packer or egg breaker buys nest run or graded eggs including undergrade eggs from another shell egg packer or egg breaker—the first shell egg packer or breaker is the collecting handler and shall remit such assessments to the Board.

(b) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer or his estate, or the person acting on behalf of creditors, shall be considered the producer of the eggs for the purpose of this subpart.

(c) The collecting handler may collect the assessment directly from the producer or deduct the assessment from the proceeds due or paid to the producer on whose eggs the assessment is made.

[41 FR 22925, June 8, 1976, as amended at 42 FR 60724, Nov. 29, 1977]

§ 1250.517 Remittance to Egg Board.

(a) The collecting handler responsible for remittance of assessments to the Board is not relieved of this obligation as a result of his failure to collect payment of the assessment from the egg producer(s).

(b) Each collecting handler required to remit the assessments on the eggs handled during each reporting period, specified in § 1250.515(a), shall remit the assessments directly to the Egg Board by check, draft, or money order payable to the Egg Board on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529. The assessment for each reporting period shall be calculated on the basis of the gross volume of eggs subject to assessment received by the collecting handler during each reporting period.

(c) Remittance through cooperating agency.

(1) In any State or specified geographic area the Egg Board, with the approval of the Secretary, may designate by agreement a cooperating agency to collect the assessments in its behalf. Every collecting handler within such a State or geographic area shall remit the assessments for each reporting period, specified in § 1250.515(a), to the designated cooperating agency by check, draft, or money order payable to said cooperating agency on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529.

(2) On or before the 20th day after the end of each reporting period, each designated cooperating agency shall remit to the Egg Board the total amount of all assessments received from collecting handlers for said reporting period together with all collecting handler reports. In addition, each designated cooperating agency shall submit to the Egg Board such information as is required by the designation agreement with the Egg Board.

§ 1250.518 Receipts for payment of assessments.

(a) Each collecting handler shall give each producer whose eggs are subject to assessment a receipt for the commercial eggs handled by said collecting handler showing payment of the assessment. This receipt may be on a separate receipt form or included as part of the invoice or settlement sheet for the eggs, but in either event shall contain the following information:

(1) Name, address, and identification number of the collecting handler;

(2) Name and address of the producer who paid the assessment;

(3) Number of cases of eggs on which assessment was paid and the total amount of the assessment; and

(4) Date on which assessment was paid by producer.

(b) All eggs sold, consigned, or delivered from a collecting handler to another handler, excluding cartoned eggs and loose graded eggs sold to the bakeries, restaurants, and institutions, shall be accompanied with the collecting handler's written statement that the assessment on the lot of eggs covered by the invoice has been paid or that lot of eggs or portion thereof is exempt from assessment under provisions of § 1250.514.

§ 1250.519 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1250.347 shall be increased by a late-payment charge of 1.5 percent each month beginning with the day following the date such assessments are 30 days past due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. Assessments that are not paid when due because of a person's failure to submit a handler report to the Board as required shall accrue late-

payment charges from the time such assessments should have been remitted. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date payment is actually received by the Board, whichever is earlier.

[58 FR 34697, June 29, 1993]

REGISTRATION, CERTIFICATION AND REPORTS

§ 1250.528 Registration of collecting handlers.

All collecting handlers shall, prior to August 1, 1976, register with the Egg Board by filing a registration statement. Registered collecting handlers will receive an identification number which must appear on all required reports and official communications with the Egg Board. New businesses subject to this subpart beginning after August 1, 1976, shall register with the Egg Board within 30 days following the beginning of operations. The statement of registration shall include:

(a) Name and complete address of the collecting handler;

(b) Name of individual(s) responsible for filing reports with the Egg Board; and

(c) Type of reporting period desired.

§ 1250.529 Reports.

(a) *Collecting handler reports.* (1) Each collecting handler shall make reports on forms made available or approved by the Egg Board. Each collecting handler shall prepare a separate report form each reporting period. Each report shall be mailed to the Egg Board within 15 days after the close of the reporting period and shall contain the following information:

(i) Date of report;

(ii) Reporting period covered by the report;

(iii) Name and address of collecting handler and identification number;

(iv) Total number of cases of eggs handled, total number of cases of eggs subject to collection of assessment, total number of cases of eggs exempt under § 1250.514 from collection of assessment, total number of cases of imported eggs handled, and total number of cases of eggs received from another handler and on which an assessment was already collected;

(v) The names and addresses of producers subject to assessment supplying eggs to the handlers and number of cases of eggs received from each producer;

(vi) Total amount of assessment due for eggs handled during the reporting period and remitted with the report; and

(vii) Such other information as may be required by the Board.

(2) Collecting handler reports shall be filed each reporting period following registration until such time as the Egg Board is notified in writing that the collecting handler has ceased to do business. During reporting periods in which the collecting handler does not handle any eggs, his report form shall state ''No Eggs Handled.''

(b) The Egg Board may require all persons subject to section 7(c) of the Act to make reports as needed for the enforcement and administration of the Order and as approved by the Secretary.

§ 1250.530 Certification of exempt producers.

Egg producers not subject to the provisions of the Act pursuant to § 1250.348 shall file with all handlers to whom they sell eggs a statement certifying their exemption from the provisions of the Act in accordance with the criterion of § 1250.348. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use by exempt producers. The certification form shall be filed with each handler within 10 days after the first sale of eggs to such handler after March 1, 1990, and annually thereafter on or before January 1 as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt. The certification shall list the following:

(a) The name and address of the producer;

(b) Basis for producer exemption according to the requirements of § 1250.348; and

(c) The signature of the producer.

If the exempt producer becomes subject to the provisions of the Act pursuant to the requirements of § 1250.348, that producer shall notify, within 10 days, all handlers with whom he has filed a certificate of exemption.

[55 FR 6974, Feb. 28, 1990]

RECORDS

§ 1250.535 Retention of records.

(a) Each person required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the fiscal period of their applicability:

(1) One copy of each report submitted to the Egg Board;

(2) Records of all exempt producers including certification of exemption as necessary to verify the address of each exempt producer; and

(3) Such other records as are necessary to verify reports submitted to the Egg Board.

(b) Egg producers subject to § 1250.514 shall maintain and retain for at least 2 years beyond the period of their applicability:

(1) Receipts, or copies thereof, for payment of assessments; and

(2) Such records as are necessary to verify monthly levels of egg production.

§ 1250.536 Availability of records.

Each handler and egg producer subject to this subpart and all persons subject to section 7(c) of the Act shall make available for inspection and copying by authorized employees of the Egg Board and/or the Secretary during regular business hours, such information as is appropriate and necessary to verify compliance with this subpart.

§ 1250.537 Confidentiality.

All information obtained by officers and employees of the Department of Agriculture, the Egg Board, or any person under contract by the Egg Board or otherwise acting on behalf of the Egg Board from the books, records, and reports of persons subject to this subpart, and all information with respect to refunds of assessments made to individual producers, shall be kept confidential in the manner and to the extent provided in § 1250.353 of the Order.

PATENTS, COPYRIGHTS, TRADEMARKS, AND INFORMATION

§ 1250.542 Patents, copyrights, trademarks, and information.

Patents, copyrights, trademarks, and information accruing from work pursuant to any plan or project undertaken by any person on behalf of the Egg Board, financed by assessment funds or other revenues of the Egg Board; shall become property of the U.S Government as represented by the Egg Board; and such patents, copyrights, trademarks, and information may be licensed subject to approval by the Secretary of Agriculture. Upon termination of the Order, the Egg Board shall transfer custody of all such patents, copyrights, trademarks, and information to the Secretary of Agriculture pursuant to the procedure provided for in § 1250.358 who shall utilize them in a manner that he determines to be in the best interest of egg producers. Funds generated from the use of patents, copyrights, trademarks, and information by the Egg Board will be considered income subject to the same fiscal, budget, and audit control as the other funds of the Egg Board. Ownership of inventions made by employees of the Board shall be determined in accordance with Executive Order 10096.

[41 FR 22925, June 8, 1976; 41 FR 23930, June 14, 1976]

PERSONAL LIABILITY

§ 1250.547 Personal liability.

No member, alternate member, employee, or agent of the Board in the performance of his duties with the Board shall be held personally responsible either individually or jointly with others, in anyway whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, by such member, alternate member, employee, or agent, except for acts of dishonesty or willful misconduct.

PART 1260—BEEF PROMOTION AND RESEARCH

Subpart A—Beef Promotion and Research Order

DEFINITIONS

Sec.
1260.101 Department.
1260.102 Secretary.
1260.103 Board.
1260.104 Committee.
1260.105 Person.
1260.106 Collecting person.
1260.107 State.
1260.108 United States.
1260.109 Unit.
1260.110 [Reserved]
1260.111 Fiscal year.
1260.112 Federation.
1260.113 Established national nonprofit industry-governed organizations.
1260.114 Eligible organization.
1260.115 Qualified State beef council.
1260.116 Producer.
1260.117 Importer.
1260.118 Cattle.
1260.119 Beef.
1260.120 Beef products.
1260.121 Imported beef or beef products.
1260.122 Promotion.
1260.123 Research.
1260.124 Consumer information.
1260.125 Industry information.
1260.126 Plans and projects.
1260.127 Marketing.
1260.128 Act.
1260.129 Customs Service.
1260.130 Part and subpart.

CATTLEMEN'S BEEF PROMOTION AND RESEARCH BOARD

1260.141 Membership of Board.
1260.142 Term of office.
1260.143 Nominations.
1260.144 Nominee's agreement to serve.
1260.145 Appointment.
1260.146 Vacancies.
1260.147 Procedure.
1260.148 Compensation and reimbursement.
1260.149 Powers of the Board.
1260.150 Duties of the Board.
1260.151 Expenses.

BEEF PROMOTION OPERATING COMMITTEE

1260.161 Establishment and membership.
1260.162 Term of office.
1260.163 Vacancies.
1260.164 Procedure.
1260.165 Compensation and reimbursement.
1260.166 Officers of the Committee.
1260.167 Powers of the Committee.
1260.168 Duties of the Committee.
1260.169 Promotion, research, consumer information and industry information.

ASSESSMENTS

1260.172 Assessments.
1260.173–1260.174 [Reserved]
1260.175 Late-payment charge.
1260.176 Adjustment of accounts.
1260.181 Qualified State beef councils.

REPORTS, BOOKS AND RECORDS

1260.201 Reports.
1260.202 Books and records.
1260.203 Confidential treatment.

MISCELLANEOUS

1260.211 Proceedings after termination.
1260.212 Effect of termination or amendment.
1260.213 Removal.
1260.214 Personal liability.
1260.215 Patents, copyrights, inventions and publications.
1260.216 Amendments.
1260.217 Separability.

Subpart B—Rules and Regulations

1260.301 Terms defined.
1260.310 Domestic assessments.
1260.311 Collecting persons for purposes of collection of assessments.
1260.312 Remittance to the Cattlemen's Board or Qualified State Beef Council.
1260.313 Document evidencing payment of assessments.
1260.314 Certification of non-producer status for certain transactions.
1260.315 Qualified State Beef Councils.
1260.316 Paperwork Reduction Act assigned number.

Subpart C [Reserved]

Subpart D—Beef Promotion and Research: Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

1260.500 General.
1260.510 Definitions.
1260.520 Responsibility for administration of regulations.
1260.530 Certification of eligibility.
1260.540 Application for certification.
1260.550 Verification of information.
1260.560 Review of certification.
1260.570 Notification of certification and the listing of certified organizations.
1260.580–1260.600 [Reserved]
1260.610 Acceptance of appointment.
1260.620 Confidential treatment of information.
1260.630 Paperwork Reduction Act assigned number.
1260.640 Application for Certification Form.

AUTHORITY: 7 U.S.C. 2901–2911.

Subpart A—Beef Promotion and Research Order

SOURCE: 51 FR 26138, July 18, 1986, unless otherwise noted.

DEFINITIONS

§ 1260.101 Department.

Department means the United States Department of Agriculture.

§ 1260.102 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 1260.103 Board.

Board means the Cattlemen's Beef Promotion and Research Board established pursuant to the Act and this subpart.

§ 1260.104 Committee.

Committee means the Beef Promotion Operating Committee established pursuant to the Act and this subpart.

§ 1260.105 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.106 Collecting person.

Collecting person means the person making payment to a producer for cattle, or any other person who is responsible for collecting and remitting an assessment pursuant to the Act, the order and regulations prescribed by the Board and approved by the Secretary.

§ 1260.107 State.

State means each of the 50 States.

§ 1260.108 United States.

United States means the 50 States and the District of Columbia.

§ 1260.109 Unit.

Unit means each State, group of States or class designation which is represented on the Board.

§ 1260.110 [Reserved]

§ 1260.111 Fiscal year.

Fiscal year means the calendar year or such other annual period as the Board may determine.

§ 1260.112 Federation.

Federation means the Beef Industry Council of the National Live Stock and Meat Board, or any successor organization to the Beef Industry Council, which includes as its State affiliates the qualified State beef councils.

§ 1260.113 Established national nonprofit industry-governed organizations.

Established national nonprofit industry-governed organizations means organizations which:

(a) Are nonprofit organizations pursuant to sections 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6));

(b) Are governed by a board of directors representing the cattle or beef industry on a national basis; and

(c) Were active and ongoing before the enactment of the Act.

§ 1260.114 Eligible organization.

Eligible organization means any organization which has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

§ 1260.115 Qualified State beef council.

Qualified State beef council means a beef promotion entity that is authorized by State statute or a beef promotion entity organized and operating within a State that receives voluntary assessments or contributions; conducts beef promotion, research, and consumer and industry information programs; and that is certified by the Board pursuant to this subpart as the beef promotion entity in such State.

§ 1260.116 Producer.

Producer means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a

sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party, (2) resold such cattle no later than ten (10) days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied.

§ 1260.117 Importer.

Importer means any person who imports cattle, beef, or beef products from outside the United States.

§ 1260.118 Cattle.

Cattle means live domesticated bovine animals regardless of age.

§ 1260.119 Beef.

Beef means flesh of cattle.

§ 1260.120 Beef products.

Beef products means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom.

§ 1260.121 Imported beef or beef products.

Imported beef or beef products means products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States: 106.1020, 106.1040, 106.1060, 106.1080, 107.2000, 107.2520, 107.4000, 107.4500, 107.4820, 107.4840, 107.5220, 107.5240, 107.5500, 107.6100, 107.6200, 107.6300.

§ 1260.122 Promotion.

Promotion means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace.

§ 1260.123 Research.

Research means studies relative to the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

§ 1260.124 Consumer information.

Consumer information means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products.

§ 1260.125 Industry information.

Industry information means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry.

§ 1260.126 Plans and projects.

Plans and projects means promotion, research, consumer information and industry information plans, studies or projects conducted pursuant to this subpart.

§ 1260.127 Marketing.

Marketing means the sale or other disposition in commerce of cattle, beef or beef products.

§ 1260.128 Act.

Act means the Beef Promotion and Research Act of 1985, Title XVI, Subtitle A of the Food Security Act of 1985, Pub. L. 99–198 and any amendments thereto.

§ 1260.129 Customs Service.

Customs Service means the United States Customs Service of the United States Department of the Treasury.

§ 1260.130 Part and subpart.

Part means the Beef Promotion and Research Order and all rules and regulations issued pursuant to the Act and the order, and the order itself shall be a ''subpart'' of such Part.

CATTLEMEN'S BEEF PROMOTION AND RESEARCH BOARD

§ 1260.141 Membership of Board.

(a) Beginning with the 1999 Board nominations and the associated appointments effective early in the year 2000, the United States shall be divided into 40 geographical units and one unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,627	2
2. Arizona	810	1
3. Arkansas	1,870	2
4. California	4,600	5
5. Colorado	3,117	3
6. Florida	1,937	2
7. Georgia	1,497	1
8. Idaho	1,763	2
9. Illinois	1,720	2
10. Indiana	1,103	1
11. Iowa	3,867	4
12. Kansas	6,550	7
13. Kentucky	2,550	3
14. Louisiana	1,010	1
15. Michigan	1,133	1
16. Minnesota	2,767	3
17. Mississippi	1,3431	1
18. Missouri	4,450	4
19. Montana	2,683	3
20. Nebraska	6,517	7
21. Nevada	510	1
22. New Mexico	1,480	1
23. New York	1,527	2
24. North Carolina	1,160	1
25. North Dakota	1,857	2
26. Ohio	1,483	1
27. Oklahoma	5,467	5
28. Oregon	1,440	1
29. Pennsylvania	1,770	2
30. South Carolina	517	1
31. South Dakota	3,733	4
32. Tennessee	2,460	2
33. Texas	14,467	1
34. Utah	903	1
35. Virginia	1,797	2
36. Wisconsin	3,700	4
37. Wyoming	1,477	1
38. Northwest	.....	1
Alaska	11	.....
Hawaii	167	.....
Washington	1,230	.....
Total	1,408	
39. Northeast	.....	1
Connecticut	70	.....
Delaware	29	.....
Maine	113	.....
Massachusetts	63	.....
New Hampshire	41	.....
New Jersey	68	.....
Rhode Island	7	.....
Vermont	302	.....
Total	693	
40. Mid-Atlantic	.....	1
District of Columbia	0	.....
Maryland	275	.....
West Virginia	447	.....
Total	722	.....
41. Importer [2]	6,535	7

[1] 1996, 1997, and 1998 average of January 1 cattle inventory data.
[2] 1995, 1996, and 1997 average of annual import data.

(b) The Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted pursuant to the Act and regulations of this Part. A producer may only be nominated to represent the unit in which that producer is a resident.

(c) At least every three (3) years, and not more than every two (2) years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of imported cattle, beef, or beef products into the United States.

(d) The Board may recommend to the Secretary a modification in the number of cattle per unit necessary for representation on the Board.

(e) The following formula will be used to determine the number of Board members who shall serve on the Board for each unit:

(1) Each geographic unit or State that includes a total cattle inventory equal to or greater than five hundred thousand (500,000) head of cattle shall be entitled to one representative on the Board;

(2) States which do not have total cattle inventories equal to or greater than five hundred thousand (500,000) head of cattle shall be grouped, to the extent practicable, into geographically contiguous units each of which have a combined total inventory of not less than 500,000 head of cattle and such unit(s) shall be entitled to at least one representative on the Board;

(3) Importers shall be represented by a single unit, with the number of Board

members representing such unit based upon a conversion of the total volume of imported cattle, beef or beef products into live animal equivalencies;

(4) Each unit shall be entitled to representation by an additional Board member for each one million (1,000,000) head of cattle within the unit which exceeds the initial five hundred thousand (500,000) head of cattle within the unit qualifying such unit for representation.

(f) In determining the volume of cattle within the units, the Board and the Secretary shall utilize the information received by the Board pursuant to §§ 1260.201 and 1260.202 industry data and data published by the Department.

[51 FR 26138, July 18, 1986, as amended at 55 FR 20445, May 17, 1990; 58 FR 12999, Mar. 9, 1993; 60 FR 62020, Dec. 4, 1995; 64 FR 3815, Jan. 26, 1999]

§ 1260.142 Term of office.

(a) The members of the Board shall serve for terms of three (3) years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years. To the extent practicable, the terms of Board members from the same unit shall be staggered for the initial Board.

(b) Each member shall continue to serve until a successor is appointed by the Secretary.

(c) No member shall serve more than two consecutive 3-year terms in such capacity.

§ 1260.143 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations. An eligible organization shall only submit nominations for positions on the Board representing units in which such eligible organization can establish that it is certified as an eligible organization to submit nominations for that unit. If the Secretary determines that a unit is not represented by an eligible organization, then the Secretary may solicit nominations from organizations, and producers residing in that unit.

(b) Nominations for representation of the importer unit may be submitted by—

(1) Organizations which represent importers of cattle, beef or beef products, as determined by the Secretary, or

(2) Individual importers of cattle, beef or beef products. Individual importers submitting nominations for representation of the importer unit must establish to the satisfaction of the Secretary that the persons submitting the nominations are importers of cattle, beef or beef products.

(c) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations for subsequent Board members shall be submitted to the Secretary not less than sixty (60) days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1260.146.

(d) Where there is more than one eligible organization representing producers in a unit, they may caucus and jointly nominate two qualified persons for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that unit.

§ 1260.144 Nominee's agreement to serve.

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1260.145 Appointment.

(a) From the nominations made pursuant to § 1260.143, the Secretary shall

appoint the members of the Board on the basis of representation provided for in § 1260.141.

(b) Producers or importers serving on the Federation Board of Directors shall not be eligible for appointment to serve on the Board for a concurrent term.

§ 1260.146 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request that nominations for a successor for the vacancy be submitted by the eligible organization(s) representing producers or importers of the unit represented by the vacancy. If no eligible organization(s) represents producers or importers in such unit, then the Secretary shall determine the manner in which nominations for the vacancy are submitted.

§ 1260.147 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum, and any action of the Board at such a meeting shall require the concurring votes of at least a majority of those present at such meeting. The Board shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Board emergency action is considered necessary, and in lieu of a properly convened meeting, the Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force as though such action had been taken at a regular or special meeting of the Board.

§ 1260.148 Compensation and reimbursement.

The members of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.149 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive or initiate, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To adopt such rules for the conduct of its business as it may deem advisable;

(e) To recommend to the Secretary amendments to this subpart; and

(f) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1260.172, in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1260.150 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, a vice-chairperson and a treasurer and such other officers as may be necessary;

(b) To elect from its members an Executive Committee of no more than 11 and no less than 9 members, whose membership shall, to the extent practicable, reflect the geographic distribution of cattle numbers or their equivalent. The vice-chairperson of the Board shall serve as chairperson of the Executive Committee and the chairperson and the treasurer of the Board shall serve as members of the Executive Committee;

(c) To delegate to the Executive Committee the authority to administer

the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(d) To elect from its members 10 representatives to the Beef Promotion Operating Committee which shall be composed of 10 members from the Board and 10 members elected by the Federation;

(e) To utilize the resources, personnel, and facilities of established national nonprofit industry-governed organizations;

(f) To review and, if approved, submit to the Secretary for approval, budgets prepared by the Beef Promotion Operating Committee on a fiscal period basis of the Committee's anticipated expenses and disbursements in the administration of the Committee's responsibilities, including probable costs of promotion, research, and consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(g) To prepare and submit to the Secretary for approval budgets on a fiscal period basis of the Board's overall anticipated expenses and disbursements, including the Committee's anticipated expenses and disbursements, in the administration of this subpart;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i)–(j) [Reserved]

(k) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(l) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(m) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or his representative may attend such meetings;

(n) To review applications submitted by State beef promotion organizations pursuant to § 1260.181 and to make determinations with regard to such applications;

(o) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(p) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

[51 FR 26138, July 18, 1986, as amended at 60 FR 58502, Nov. 28, 1995]

§ 1260.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve), as the Secretary finds are reasonable and likely to be incurred by the board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Administrative expenses incurred by the board shall not exceed 5 percent of the projected revenue of that fiscal period. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to § 1260.172.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1260.172, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after the effective date of this subpart.

(c) [Reserved]

(d) Expenditures for the maintenance and expansion of foreign markets for beef and beef products shall be limited to an amount equal to or less than the total amount of assessments paid pursuant to § 1260.172(a).

[51 FR 26138, July 18, 1986, as amended at 53 FR 52631, Dec. 29, 1988 and 54 FR 15918, Apr. 20, 1989; 60 FR 58502, Nov. 28, 1995]

BEEF PROMOTION OPERATING COMMITTEE

§ 1260.161 Establishment and membership.

(a) There is hereby established a Beef Promotion Operating Committee of 20 members. The Committee shall be composed of 10 Board members elected by the Board and 10 producers elected by the Federation.

(b) Board representation on the Committee shall consist of the chairperson, vice-chairperson and treasurer of the Board, and seven representatives of the Board who will be duly elected by the Board to serve on the Committee. The seven representatives to the Committee elected by the Board shall, to the extent practical, reflect the geographic and unit distribution of cattle numbers, or the equivalent thereof.

(c) Federation representation on the Committee shall consist of the Federation chairperson, vice-chairperson, and eight duly elected producer representatives of the Federation Board of Directors who are members or ex officio members of the Board of Directors of a qualified State beef council. The eight representatives of the Federation elected to serve on the Committee shall, to the extent practical, reflect the geographic distribution of cattle numbers. The Federation shall submit to the Secretary the names of the representatives elected by the Federation to serve on the Committee and the manner in which such election was held and that such representatives are producers and are members or ex officio members of the Board of Directors of a qualified State beef council on the Federation Board of Directors. The prospective Federation representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board or the Committee. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1260.162 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1260.163 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Federation, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to elect representatives pursuant to § 1260.161 (b) and (c) of this section.

§ 1260.164 Procedure.

(a) Attendance of at least 15 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than two-thirds of its members by mail, telephone, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

§ 1260.165 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.166 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The chairperson of the Board shall be chairperson of the Committee.

(b) The chairperson of the Federation shall be vice-chairperson of the Committee.

(c) The treasurer of the Board shall be treasurer of the Committee.

(d) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1260.167 Powers of the Committee.

The Committee shall have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of beef and beef products as well as projects for research, consumer information and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable;

(c) To establish committees of persons other than Committee members to advise the Committee and pay the necessary and reasonable expenses and fees of the members of such committees.

§ 1260.168 Duties of the Committee.

The Committee shall have the following duties:

(a) To meet and to organize;

(b) To contract with established national nonprofit industry-governed organizations to implement programs of promotion, research, consumer information and industry information;

(c) To disseminate information to Board members;

(d) To prepare and submit to the Board for approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of its responsibilities, including probable costs of promotion, research, consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(e) To develop and submit to the Secretary for approval promotion, research, consumer information and industry information plans or projects;

(f) With the approval of the Secretary to enter into contracts or agreements with established national nonprofit industry-governed organizations for the implementation and conduct of activities authorized under §§ 1260.167 and 1260.169 and for the payment of the cost of such activities with funds collected through assessments pursuant to § 1260.172. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Committee a budget or budgets which shall show the estimated cost to be incurred for such activity or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Committee or Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary, the Committee or the Board may require. The Secretary or agents of the Committee or the Board may audit periodically the records of the contracting party;

(g) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(h) To give the Secretary the same notice of meetings of the Committee and its subcommittees and advisory committees in order that the Secretary, or his representative, may attend such meetings;

(i) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(j) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the cattle industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

§ 1260.169 Promotion, research, consumer information and industry information.

The Committee shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans and projects for promotion, research, consumer information and industry information authorized by this subpart. Such plans and projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research, consumer information and industry information, with respect to beef and beef products designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products;

(b) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of beef and beef products and the creation of new products thereof, to the end that marketing and utilization of beef and beef products may be encouraged, expanded, improved or made more acceptable in the United States and foreign markets;

(c) Each plan or project authorized under paragraph (a) and (b) of this section shall be periodically reviewed or evaluated by the Committee to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information and industry information. If it is found by the Committee that any such plan or project does not further the purposes of the Act, then the Committee shall terminate such plan or project;

(d) In carrying out any plan or project of promotion or advertising implemented by the Committee, no reference to a brand or trade name of any beef product shall be made without the approval of the Board and the Secretary. No such plans or projects shall make use of any unfair or deceptive acts or practices, including unfair or deceptive acts or practices with respect to the quality, value or use of any competing product; and

(e) No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this part.

ASSESSMENTS

§ 1260.172 Assessments.

(a) *Domestic assessments.* (1) Except as prescribed by regulations approved by the Secretary, each person making payment to a producer for cattle purchased from such producer shall be a collecting person and shall collect an assessment from the producer, and each producer shall pay such assessment to the collecting person, at the rate of one dollar ($1) per head of cattle purchased and such collecting person shall remit the assessment to the Board or to a qualified State beef council pursuant to § 1260.172(a)(5).

(2) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a qualified State beef council or to the Board an assessment on such cattle at the rate of one dollar ($1) per head of cattle or the equivalent thereof.

(3) In determining the assessment due from each producer pursuant to § 1260.172(a), a producer who is contributing to a qualified State beef council(s) shall receive a credit from the Board for contributions to such Council, but not to exceed 50 cents per head of cattle assessed.

(4) In order for a producer described in § 1260.172(a) to receive the credit authorized in § 1260.172(a)(3), the qualified State beef council or the collecting person must establish to the satisfaction of the Board that the producer has contributed to a qualified State beef council.

(5) Each person responsible for the remittance of the assessment pursuant to § 1260.172 (a) (1) and (2) shall remit the assessment to the qualified State beef council in the State from which the cattle originated prior to sale, or if there is no qualified State beef council within such State, the assessment shall be remitted directly to the Board. However, the Board, with the approval of the Secretary, may authorize qualified

State beef councils to propose modifications to the foregoing ''State of origin'' rule to ensure effective coordination of assessment collections between qualified State beef councils. Qualified State beef councils and the Board shall coordinate assessment collection procedures to ensure that producers selling or marketing cattle in interstate commerce are required to pay only one assessment per individual sale of cattle. For the purpose of this subpart, ''State of origin'' rule means the State where the cattle were located at time of sale, or the State in which the cattle were located prior to sale if such cattle were transported interstate for the sole purpose of sale. Assessments shall be remitted not later than the 15th day of the month following the month in which the cattle were purchased or marketed.

(6) If a State law or regulation promulgated pursuant to State law requires the payment and collection of a mandatory, nonrefundable assessment of more fifty (50) cents per head on the sale and purchase of cattle, or the equivalent thereof for beef and beef products as described in §1260.172 (a)(1) and (2) for use by a qualified State beef council to fund activities similar to those described in §1260.169, and such State law or regulation authorizes the issuance of a credit of that amount of the assessment which exceeds fifty (50) cents to producers who waive any right to the refund of the assessment credited by the State due pursuant to this subpart, then any producer subject to such State law or regulation who pays only the amount due pursuant to such State law or regulation and this subpart, including any credits issued, shall thereby waive that producer's right to receipt from the Board of a refund of such assessment for that portion of such refund for which the producer received credit pursuant to such State law or regulation.

(b) *Importer assessments*. (1) Importers of cattle, beef, and beef products into the United States shall pay an assessment to the Board through the U.S. Customs Service, or in such other manner as may be established by regulations approved by the Secretary.

(2) The assessment rates for imported cattle, beef, and beef products are as follows:

Live Cattle	Assessment
0102.10.00103	$1.00/hd
0102.10.00201	$1.00/hd
0102.10.00309	$1.00/hd
0102.10.00504	$1.00/hd
0102.90.20004	$1.00/hd
0102.90.40206	$1.00/hd
0102.90.40402	$1.00/hd
0102.90.40607	$1.00/hd

Beef and Beef Products	Assessment	
	cents/lb	cents/kg
0201.10.00103	.77	1.697542
0201.10.00906	.20	0.440920
0201.20.20009	.28	0.617288
0201.20.40005	.27	0.595242
0201.20.60000	.20	0.440920
0201.30.20007	.28	0.617288
0201.30.40003	.27	0.595242
0201.30.60008	.27	0.595242
0202.10.00102	.77	1.697542
0202.10.00905	.20	0.440920
0202.20.20008	.28	0.617288
0202.20.40004	.27	0.595242
0202.20.60009	.20	0.440920
0202.30.20006	.28	0.617288
0202.30.40002	.27	0.595242
0202.30.60007	.27	0.595242
0206.10.00000	.20	0.440920
0206.21.00007	.20	0.440920
0206.22.00006	.20	0.440920
0206.29.00009	.20	0.440920
0210.20.00002	.35	0.771610
1601.00.40003	.25	0.551150
1601.00.60204	.25	0.551150
1602.50.05004	.35	0.771610
1602.50.09000	.35	0.771610
1602.50.10203	.35	0.771610
1602.50.10409	.35	0.771610
1602.50.20201	.37	0.815702
1602.50.20407	.37	0.815702
1602.50.60006	.38	0.837748

(3) The Board may prescribe by regulation, with the approval of the Secretary, an increase or decrease in the level of assessments for imported beef and beef products based upon revised determinations of live animal equivalencies.

(4) The assessments due upon imported cattle, beef and beef products shall be remitted to the Customs Service upon importation of the cattle, beef or beef products into the United States, or in such other manner as may be provided by regulations prescribed by the Board and approved by the Secretary.

(c) The collection of assessments pursuant to §1260.172 (a) and (b) shall begin

with respect to cattle purchased or cattle, beef, and beef products imported on and after the effective date of this section and shall continue until terminated by the Secretary.

(d) Money remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable as appropriate to the qualified State beef council or the ''Cattlemen's Beef Promotion and Research Board.'' Such remittances and the reports specified in § 1260.201 shall be mailed to the location designated by the Board.

[51 FR 26138, July 18, 1986, as amended at 53 FR 52631, Dec. 29, 1988 and 54 FR 15918, Apr. 20, 1989; 54 FR 28019, July 5, 1989]

§ 1260.173–1260.174 [Reserved]

§ 1260.175 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1260.172 shall be increased 2.0 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the qualified State beef council or Board, whichever is earlier.

§ 1260.176 Adjustment of accounts.

Whenever the Board or the Department determines that money is due the Board or that money is due any person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in § 1260.172. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1260.181 Qualified State beef councils.

(a) Any beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives assessments or contributions from producers and conducts beef promotion, research, consumer information and/or industry information programs may apply for certification of qualification so that producers may receive credit pursuant to § 1260.172(a)(3) for contributions to such organization. The Board shall review such applications for certification and shall make a determination as to certification of such applicant.

(b) In order for the State beef council to be certified by the Board as a qualified State beef council, the council must:

(1) Conduct activities as defined in § 1260.169 that are intended to strengthen the beef industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such council will collect assessments paid on cattle originating from the State or unit within which the council operates and shall establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization shall remit to the Board assessments paid and remitted to the council, minus authorized credits issued to producers pursuant to § 1260.172(a)(3), by the last day of the month in which the assessment was remitted to the qualified State beef council unless the Board determines a different date for remittance of assessments.

(5) [Reserved]

(6) Certify to the Board that the council will furnish the Board with an annual report by a certified public accountant of all funds remitted to such

council pursuant to this subpart and any other reports and information the Board or Secretary may request; and

(7) Not use council funds collected pursuant to this subpart for the purpose of influencing governmental policy or action, or to fund plans or projects which make use of any unfair or deceptive acts or practices including unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

[51 FR 26138, July 18, 1986, as amended at 60 FR 58502, Nov. 28, 1995]

REPORTS, BOOKS AND RECORDS

§ 1260.201 Reports.

Each importer, person marketing cattle, beef or beef products of that person's own production directly to consumers, and each collecting person making payment to producers and responsible for the collection of the assessment under § 1260.172 shall report to the Board periodically information required by regulations prescribed by the Board and approved by the Secretary. Such information may include but is not limited to the following:

(a) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transaction;

(b) The number of cattle imported; or the equivalent thereof of beef or beef products;

(c) The amount of assessment remitted;

(d) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and,

(e) The date any assessment was paid.

EFFECTIVE DATE NOTE: The regulations implementing the reporting and recordkeeping provisions contained in § 1260.201 will be submitted for approval to the Office of Management and Budget and will not become effective prior to (OMB) approval.

§ 1260.202 Books and records.

Each person subject to this subpart shall maintain and make available for inspection by the Secretary the records required by regulations prescribed by the Board and approved by the Secretary that are necessary to carry out the provisions of this subpart, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

EFFECTIVE DATE NOTE: The regulations implementing the reporting and recordkeeping provisions contained in § 1260.202 will be submitted for approval to the Office of Management and Budget and will not become effective prior to (OMB) approval.

§ 1260.203 Confidential treatment.

All information obtained from such books, records or reports required under the Act and this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting organizations having access to such information, and shall not be available to Board members or any other producers or importers. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to this information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a

statement of the particular provisions of the subpart violated by such person.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

MISCELLANEOUS

§ 1260.211 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than 11 of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to §§ 1260.150 and 1260.168.

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information plans or projects authorized pursuant to this subpart.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

§ 1260.212 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or,

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1260.213 Removal.

If any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Board or Committee may recommend to the Secretary that that person be removed from office. If the Secretary finds that the recommendation demonstrates adequate cause, the Secretary shall remove the person from office. A person appointed or certified under this part or any employee of the Board or Committee may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1260.214 Personal liability.

No member, employee or agent of the Board or the Committee, including employees or agents of a qualified State beef council acting on behalf of the Board, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes or other acts of either commission or omission, or such member or employee, except for acts of dishonesty or willful misconduct.

§ 1260.215 Patents, copyrights, inventions and publications.

(a) Any patents, copyrights, inventions or publications developed

through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, ensure to the benefit of the Board. Upon termination of this subpart, § 1260.211 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section.

§ 1260.216 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by any organization or association certified pursuant to the Act and this part, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1260.217 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof of other persons or circumstances shall not be affected thereby.

Subpart B—Rules and Regulations

SOURCE: 53 FR 5754, Feb. 26, 1988, unless otherwise noted.

§ 1260.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms as appears in Subpart A of this part.

§ 1260.310 Domestic assessments.

(a) A $1.00 per head assessment on cattle sold shall be paid by the producer of the cattle in the manner designated in § 1260.311.

(b) If more than one producer shares the proceeds received for the cattle sold, each such producer is obligated to pay that portion of the assessments which are equivalent to the producer's proportionate share of the proceeds.

(c) Failure of the collecting person to collect the assessment on each head of cattle sold as designated in § 1260.311 shall not relieve the producer of his obligation to pay the assessment to the appropriate qualified State beef council or the Cattlemen's Board as required in § 1260.312.

§ 1260.311 Collecting persons for purposes of collection of assessments.

Collecting persons for purposes of collecting and remitting the $1.00 per head assessment shall be:

(a) Except as provided in paragraph (b) and (c) of this section, each person making payment to a producer for cattle purchased in the United States shall collect from the producer an assessment at the rate of $1.00 per head of cattle purchased and shall be responsible for remitting assessments to the qualified State beef council or the Cattlemen's Board as provided in § 1260.312. The collecting person shall collect the assessment at the time the collecting person makes payment or any credit to the producer's account for the cattle purchased. The person paying the producer shall give the producer a receipt indicating payment of the assessment.

(b) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, shall be responsible for remitting to the qualified State beef council or the Cattlemen's Board pursuant to § 1260.312, an assessment on such cattle at the rate of $1.00 per head of cattle or the equivalent thereof. The obligation to remit the assessment shall attach upon slaughter of the cattle, and the producer responsible for remitting the assessment shall remit the assessment in the manner provided in § 1260.312. For the purposes

of this subpart, a producer marketing cattle of the producer's own production in the form of beef or beef products shall be considered a collecting person.

(c) In the States listed below there exists a requirement that cattle be brand inspected by State authorized inspectors prior to sale. In addition, when cattle are sold in the sales transactions listed below in those States, these State authorized inspectors are authorized to, and shall, collect assessments due as a result of the sale of cattle. In those transactions in which inspectors are responsible for collecting assessments, the person paying the producer shall not be responsible for the collection and remittance of such assessments. The following chart identifies the party responsible for collecting and remitting assessments in these States:

State	Sales through auction market	Sales to a slaughter/packet	Sales to a feedlot	Sales to an order buyer/dealer	Country sales[1]
Arizona	CP	CP	CP	B	B
California	CP	CP	B	B–CP	B
Colorado	CP	B	B	B	B
Idaho	CP	CP	B	B	B
Montana	CP	B	B	B	B
Nebraska	CP	CP	B–CP	B–CP	B–CP
Oregon	CP	B–CP	B	B	B
New Mexico	CP	B–CP	B–CP	B–CP	B–CP
Utah	CP	B–CP	B	B	B
Washington	CP	CP	B	B–CP	B
Wyoming	CP	B	B	B	B

Key:
B—Brand inspector has responsibility to collect and remit assessments due.
CP—The person paying the producer shall be the collecting person and has responsibility to collect and remit the assessments due.
B–CP—Brand inspector has responsibility to collect; however, when there has not been a physical brand inspection the person paying the producer shall be the collecting person and has the responsibility to collect and remit assessments due.
[1] For the purpose of this subpart, the term ''country sales'' shall include any sales not conducted at an auction or livestock market and which is not a sale to a slaughter/packer, feedlot or an order buyer or dealer.

(d) For cattle delivered on futures contracts, the commission firm or the market agency representing the seller in the delivery of cattle shall be the collecting person.

(e) In a case where a producer sells cattle as part of a custom slaughter operation, the producer shall be the collecting person in the same manner as if the cattle were slaughtered for sale.

§ 1260.312 Remittance to the Cattlemen's Board or Qualified State Beef Council.

Each person responsible for the collection and remittance of assessments shall transmit assessments and a report of assessments to the qualified State beef council of the State in which such person resides or if there is no qualified State beef council in such State, then to the Cattlemen's Board as follows:

(a) *Reports*. Each collecting person shall make reports on forms made available or approved by the Cattlemen's Board. Each collecting person shall prepare a separate report for each reporting period. Each report shall be mailed to the qualified State beef council of the State in which the collecting person resides, or its designee, or if there exists no qualified State beef council in such State, to the Cattlemen's Board. Each report shall contain the following information:

(1) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transactions;

(2) The amount of assessment remitted;

(3) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and

(4) The date any assessment was paid.

(b) *Reporting periods*. Each calendar month shall be a reporting period and the period shall end at the close of business on the last business day of the month.

(c) *Remittances*. The remitting person shall remit all assessments to the qualified State beef council or its designee, or, if there is no qualified State beef council, to the Cattlemen's Board

at P.O. Box 27–275; Kansas City, Missouri 64180–0001, with the report required in paragraph (a) of this section not later than the 15th day of the following month. All remittances sent to a qualified State beef council or the Cattlemen's Board by the remitting persons shall be by check or money order payable to the order of the qualified State beef council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

§ 1260.313 Document evidencing payment of assessments.

Each collecting person responsible for remitting an assessment to a qualified State beef council or the Board, other than a producer slaughtering cattle of the producer's own production for sale, is required to give the producer from whom the collecting person collected an assessment written evidence of payment of the Beef Promotion and Research Assessments. Such written evidence serving as a receipt shall contain the following information:

(a) Name and address of the collecting person.

(b) Name of producer who paid assessment.

(c) Number of head of cattle sold.

(d) Total assessments paid by the producer.

(e) Date.

§ 1260.314 Certification of non-producer status for certain transactions.

(a) The assessment levied on each head of cattle sold shall not apply to cattle owned by a person:

(1) If the person certifies that the person's only share in the proceeds of a sale of cattle, beef, or beef products is a sales commission, handling fee or other service fee; or

(2) If the person:

(i) Certifies that the person acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party,

(ii) Establishes that such cattle were resold not later than 10 days from the date on which the person acquired ownership; and

(iii) Certifies that the assessment levied upon the person from whom the person purchased the cattle, if an assessment was due, has been collected and has been remitted, or will be remitted in a timely fashion.

(b) Each person seeking non-producer status pursuant to § 1260.116 of this part shall provide the collecting person with a Statement of Certification of Non-Producer Status on a form approved by the Board and the Secretary.

(c) A copy of the Statement of Certification of Non-Producer Status shall be forwarded, upon request, by the collecting person to the qualified State beef council or the Cattlemen's Board.

§ 1260.315 Qualified State Beef Councils.

The following State beef promotion entities have been certified by the Board as qualified State beef councils:

Alabama Cattlemen's Association
Arizona Beef Council
Arkansas Beef Council
California Beef Council
Colorado Beef Council
Florida Beef Council, Inc.
Georgia Beef Board, Inc.
Idaho Beef Council
Illinois Beef Council
Indiana Beef Council
Iowa Beef Cattle Producers Association
Kansas Beef Council
Kentucky Beef Cattle Association
Louisiana Beef Industry Council
Maryland Beef Council
Michigan Beef Industry Commission
Minnesota Beef Council
Mississippi Cattle Industry Board
Missouri Beef Industry Council
Montana Beef Council
Nebraska Beef Industry Development Board
Nevada Beef Council
New Mexico Beef Council
New York Beef Industry Council
North Carolina Cattlemen's Association
North Dakota Beef Commission
Ohio Beef Council
Oklahoma Beef Commission
Oregon Beef Council
Pennsylvania Beef Council, Inc.
South Carolina Cattle and Beef Board
South Dakota Beef Industry Council
Tennessee Beef Industry Council
Texas Beef Industry Council
Utah Beef Council
Vermont Beef Council
Virginia Cattle Industry Board
Washington State Beef Commission
West Virginia Beef Industry
Wisconsin Beef Council

Wyoming Beef Council

§ 1260.316 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0152.

Subpart C [Reserved]

Subpart D—Beef Promotion and Research: Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

SOURCE: 51 FR 11559, Apr. 4, 1986, unless otherwise noted. Redesignated at 51 FR 26138, July 18, 1986, and further redesignated at 51 FR 35197, Oct. 1, 1986. Redesignated also at 53 FR 9858, Mar. 28, 1988.

§ 1260.500 General.

State organizations or associations shall be certified by the Secretary as provided for in the Beef Promotion and Research Act of 1985 to be eligible to make nominations of cattle producers to the Board. Additionally, where there is no eligible organization or association in a State, the Secretary may provide for nominations in the manner prescribed in this subpart. Organizations or associations determined by the Secretary to represent importers of cattle, beef, and beef products may submit nominations for membership on the Board in a manner prescribed by the Secretary in this subpart. The number of nominees required for each allotted position will be determined by the Secretary.

§ 1260.510 Definitions.

As used in this subpart:

Act means the Beef Promotion and Research Act of 1985 (7 U.S.C. 2901–2918).

Beef means the flesh of cattle.

Beef products means edible products produced in whole or in part from beef, exclusive of milk and milk products produced therefrom.

Board means the Cattlemen's Beef Promotion and Research Board established under section 5(1) of the Act.

Cattle means live, domesticated bovine animals regardless of age.

Department means the United States Department of Agriculture.

Importer means a person who imports cattle, beef, or beef products from outside the United States.

Livestock and Seed Division means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

Producer means a person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

State means each of the 50 States.

Unit means a State or combination of States which has a total inventory of not less than 500,000 head of cattle; or importers.

§ 1260.520 Responsibility for administration of regulations.

The Livestock and Seed Division shall have the responsibility for administering the provisions of this subpart.

§ 1260.530 Certification of eligibility.

(a) *State organizations or associations: Requirements for certification.* (1) To be eligible for certification to nominate producer members to the Board, State organizations or associations must meet all of the following criteria:

(i) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(ii) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(iii) There must be a history of stability and permanency.

(iv) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(2) Written evidence of compliance with the certification criteria shall be contained in a factual report submitted to the Secretary by all applicant State organizations or associations.

(3) The primary consideration in determining the eligibility of a State organization or association shall be based on the criteria set forth in this section. However, the Secretary may consider any additional information that the Secretary deems relevant and appropriate.

(4) The Secretary shall certify any State organization or association which he determines complies with the criteria in this section, and his eligibility determination shall be final.

(b) *Organizations or associations representing importers.* The determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (i.e., beef, or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

The Secretary may also consider additional information that the Secretary deems relevant and appropriate. The Secretary's determination as to eligibility shall be final.

§ 1260.540 Application for certification.

(a) *State organizations or associations.* Any State organization or association which meets the eligibility criteria specified in § 1260.530(a) for certification is entitled to apply to the Secretary for such certification of eligibility to nominate producers for appointment to the Board. To apply, such organization or association must submit a completed ''Application for Certification of Organization or Association,'' Form LS–25, contained in § 1260.640. It may be reproduced or additional copies may be obtained from the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250. (Telephone: 202/447–2650.)

(b) *Importer organizations or associations.* Any organization or association whose members import cattle, beef, or beef products into the United States may apply to the Secretary for determination of eligibility to nominate importers under the Act. Applications shall be in writing and shall contain the information required by § 1260.530. Interested organizations or associations may contact the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250; (Telephone: 202/447–2650) for information concerning application procedures.

§ 1260.550 Verification of information.

The Secretary may require verification of the information to determine eligibility for certification to make nominations under the Act.

§ 1250.560 Review of certification.

The Secretary may terminate or suspend certification or eligibility of any organization or association if it ceases to comply with the certification or eligibility criteria set forth in this subpart. The Secretary may require any information deemed necessary to ascertain whether the organization or association may remain certified or eligible to make nominations.

§ 1260.570 Notification of certification and the listing of certified organizations.

Organizations and associations shall be notified in writing as to whether they are eligible to nominate producer members to the Board. A copy of the certification or eligibility determination shall be furnished to certified or eligible organizations and associations. Copies shall also be maintained on file in the Livestock and Seed Division office, where they will be available for inspection.

§§ 1260.580–1260.600 [Reserved]

§ 1260.610 Acceptance of appointment.

Producers and importers nominated to the Board must signify in writing their intent to serve if appointed.

§ 1260.620 Confidential treatment of information.

All documents and information submitted to or obtained by the Department shall be kept confidential by all employees of the Department, except that the Secretary may issue general statements based upon the information collected from a number of different sources. These general statements will not identify any information as having been furnished by any one source.

§ 1260.630 Paperwork Reduction Act assigned number.

The OMB has approved the information collection request contained in this subpart under the provisions of 44 U.S.C. Chapter 35, and OMB Control Number 0581–152 has been assigned.

§ 1260.640 Application for Certification Form.

The following official form, ''Application for Certification of Association or Organization,'' must be completed and submitted to the Department by eligible State organizations or associations seeking certification by the Secretary. This form may be reproduced.

Information is collected in order to determine eligibility of organizations or associations to nominate cattle producers to serve as members of the Board. Application is voluntary and information is held confidential (Beef Promotion and Research Act of 1985).

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

APPLICATION FOR CERTIFICATION OF ORGANIZATION OR ASSOCIATION

Form Approved
OMB NO. 0581-0152
Expires 12-31-88

Organizations or associations must apply for certification by the Secretary to be eligible to participate in the making of nominations of cattle producers to serve as members of the Cattlemen's Beef Promotion and Research Board as provided in the Beef Promotion and Research Act of 1985. Information submitted in response to all items must be complete. Please type or print clearly. Send original only to: *Marketing Programs and Procurement Branch*
Livestock and Seed Division, AMS
U. S. Department of Agriculture, Room 2610-S
Washington, DC 20250

1. NAME AND ADDRESS OF ORGANIZATION *(Street address or P.O. Box No., City, State, ZIP)*

TEL. (AC .....) .....

2. TYPE OF ORGANIZATION *(Check one)*
☐ Cattle Assoc. ☐ General Farm Organization
☐ Other *(Specify)* .....

3. STATE

4. TOTAL PAID MEMBERSHIP *(Most RECENT FULL calendar year)*
IN 198__ NO. _____

5. NUMBER OF PAID MEMBERS ENGAGED IN CATTLE PRODUCTION *(Most RECENT FULL calendar year)*
IN 198__ NO. _____

6. TOTAL ESTIMATED INVENTORY OF CATTLE OWNED BY PAID MEMBERS *(Most RECENT FULL calendar year)*
AS OF JAN. 1, 198__ NO. _____

7. AS EVIDENCE OF THE STABILITY AND PERMANENCY OF THE ORGANIZATION, GIVE:

A. No. of Years in Existence

B. No. of Paid Members during each of the last four calendar years:

	198__	198__	198__	198__
No. →				

C. Other Evidence *(Explain)*

I hereby certify that: (1) a primary or overriding purpose of this organization or association is to promote the economic welfare of cattle producers, and (2) the information provided in response to the above items is true, complete, and correct to the best of my knowledge. The Secretary of Agriculture may examine our books, documents, papers, records, files, and facilities to verify any of the information submitted and may procure such other information as may be required to determine this organization's or association's eligibility for certification.

8. NAME AND TITLE OF PERSON COMPLETING THIS APPLICATION *(Type or print)*	9. DATE	10. SIGNATURE

FORM LS-25
(JAN 86)

PART 1270—WOOL AND MOHAIR ADVERTISING AND PROMOTION [RESERVED]

AUTHORITY: 7 U.S.C. 1781–1787.

CHAPTER XIII—NORTHEAST DAIRY COMPACT COMMISSION

Part		*Page*
1300	Over-order price regulations	?
1301	Definitions	?
1303	Handlers reports	?
1304	Classification of milk	?
1305	Class price	?
1306	Compact over-order producer price	?
1307	Payments for milk	?
1308	Administrative assessment	?
1309	Supply management refund program	?
1361	Rulemaking procedures	?
1371	Producer referendum	?
1381	Rules of practice governing proceedings on petitions to modify or to be exempted from compact over-order price regulations	?

PART 1300—OVER-ORDER PRICE REGULATIONS

Sec.
1300.1 Compact Commission.
1300.2 Continuity and separability of provisions.
1300.3 Handler responsibility for records and facilities.
1300.4 Termination of obligation.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 62 FR 29638, May 30, 1997, unless otherwise noted.

§ 1300.1 Compact Commission.

(a) *Designation*. The agency for the administration of the Pricing Regulation shall be the compact commission.

(b) *Powers*. The compact commission shall have the following powers:

(1) Administer the pricing regulation in accordance with its terms and provisions;

(2) Make rules and regulations to effectuate the terms and provisions of the pricing regulation;

(3) Receive and investigate complaints of violations;

(4) Recommend amendments.

(c) *Duties*. The compact commission shall perform all the duties necessary to administer the terms and provisions of the pricing regulation, including, but not limited to the following:

(1) Employ and fix the compensation of persons necessary to enable them to exercise their powers and perform their duties;

(2) Pay out of funds provided by the administrative assessment all expenses necessarily incurred in the maintenance and functioning of their office and in the performance of their duties;

(3) Keep records which will clearly reflect the transactions provided for in the pricing regulation;

(4) Announce publicly at its discretion, by such means as it deems appropriate, the name of any handler who, after the date upon which he is required to perform such act, has not:

(i) Made reports required by the pricing regulation;

(ii) Made payments required by the pricing regulation; or

(iii) Made available records and facilities as required pursuant to § 1300.3;

(5) Prescribe reports required of each handler under the pricing regulation. Verify such reports and the payments required by the pricing regulation by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda,) of the handler, and the records of any other person that are relevant to the handler's obligation under the pricing regulation, by examining such handler's milk handling facilities; and by such other investigation as the compact commission deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the pricing regulation. Reclassify fluid milk product received by any handler if such examination and investigation discloses that the original classification was incorrect;

(6) Furnish each regulated handler a written statement of such handler's accounts with the compact commission promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(7) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information covering operation of the pricing regulation and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

§ 1300.2 Continuity and separability of provisions.

(a) *Effective time*. The provisions of this pricing regulation or any amendment to the pricing regulation shall become effective at such time as the compact commission may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination*. The compact commission shall suspend or terminate any or all of the provisions of the pricing regulation whenever they find that such provision(s) obstructs or does not tend to effectuate the declared policy of the compact. The pricing regulation shall terminate whenever the provisions of the compact authorizing it cease to be in effect.

(c) *Continuing obligations*. If upon the suspension or termination of any or all

of the provisions of the pricing regulation there are any obligations arising under the pricing regulation, the final accrual or ascertainment of which requires acts by any handler, by the compact commission, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspensions or termination.

§ 1300.3 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of his operations and make such records and his facilities available to the compact commission. If adequate records of a handler, or of any other person, that are relevant to the obligation of such handler are not maintained and made available, any fluid milk product required to be reported by such handler for which adequate records are not available shall not be considered accounted for or established as used in a class other than the highest price class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of his operations (including, but not limited to, records of purchases, sales, processing, packaging and disposition) as are necessary to verify whether such handler has any obligation under the pricing regulation and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of fluid milk product contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time and source of each receipt;

(ii) The utilization of all fluid milk product showing the respective quantities of such fluid milk product in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the compact commission deems necessary to verify or establish such handler's obligation under the pricing regulation.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operation and all facilities the compact commission finds are necessary to verify the information required to be reported by the pricing regulation and/or to ascertain such handler's reporting, monetary or other obligation under the pricing regulation. Each handler shall permit the compact commission to observe plant operations and equipment and make available to the compact commission such facilities as are necessary to carry out their duties.

(c) *Retention of records.* All records required under the pricing regulation to be made available to the compact commission shall be retained by the handler for a period of three years to begin at the end of the month to which such records pertain. If, within such a three year period, the compact commission notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding or court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the compact commission. The compact commission shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1300.4 Termination of obligation.

The provision of this section shall apply to any obligation under the pricing regulation for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the pricing regulation shall terminate two years after the last day of the month during which the compact commission receives the handler's report of receipts and utilization on which such obligation is based, unless within such a two year period, the compact commission notifies the handler in writing that such money is due and payable. Service of such written notice shall be

complete upon mailing to the handler's last known address and it shall contain but need not be limited to the following information:

The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or such cooperative association, or if the obligation is payable to the compact commission, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the pricing regulation, to make available to the compact commission all records required by the pricing regulation to be made available, the compact commission may notify the handler in writing, within the two year period provided for in paragraph (a) of this section, of such failure or refusal. If the compact commission so notifies a handler, the said two year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the compact commission;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the pricing regulation to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Unless the handler files a petition to the compact commission to commence litigation within the applicable two year period indicated below, the obligation of the compact commission:

(1) To pay a handler any money which such handler claims to be due him under the terms of the pricing regulation shall terminate two years after the end of the month during which the fluid milk product involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the compact commission) shall terminate two years after the end of the month during which payment was made by the handler.

PART 1301—DEFINITIONS

Sec.

1301.1 Compact.
1301.2 Commission.
1301.3 Northeast Dairy Compact Regulated Area.
1301.4 Plant.
1301.5 Pool plant.
1301.6 Partially regulated plant.
1301.7 Non pool plant.
1301.8 Milk.
1301.9 Handler.
1301.10 Producer-handler.
1301.11 Producer.
1301.12 Producer milk.
1301.13 Exempt milk.
1301.14 Fluid milk product.
1301.15 Fluid cream product.
1301.16 Filled milk.
1301.17 Cooperative association.
1301.18 Person.
1301.19 Route disposition.
1301.20 Distributing plant.
1301.21 Supply plant.
1301.22 State dairy regulation.
1301.23 Diverted milk.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 62 FR 29639, May 30, 1997, unless otherwise noted.

§ 1301.1 Compact.

Compact means the Northeast Dairy Compact as approved by section 147 of the Federal Agriculture Improvement and Reform Act (Fair Act), Pub. L. 104–127.

§ 1301.2 Commission.

Commission means the commission established by the Northeast Dairy Compact.

§ 1301.3 Northeast Dairy Compact Regulated Area.

Northeast Dairy Compact Regulated Area hereinafter called the *Regulated Area* means all territory within the boundaries of the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. All waterfront facilities connected therewith and craft moored thereat, and all territory therein occupied by any governmental installation, institution, or other similar establishment.

§ 1301.4 Plant.

Plant means the land and buildings, together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing or packaging of milk or milk products. The term plant shall not include:

(a) Distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants); or

(b) Bulk reload points (separate premises used for the purpose of transferring bulk milk from one tank truck to another tank truck while en route from dairy farmers' farms to a plant). If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the compact commission that the facility be treated as a reload point; otherwise it shall be a plant. The cooling of milk, collection or testing of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.

§ 1301.5 Pool plant.

Pool plant means any milk plant located in the regulated area.

§ 1301.6 Partially regulated plant.

Partially regulated plant means a milk plant not located in the regulated area but having Class I distribution in the regulated area, or receipts from producers located in the regulated area.

§ 1301.7 Non pool plant.

Non pool plant means any milk plant that is not a pool plant pursuant to section 1301.5 and not a partially regulated plant pursuant to section 1301.6.

§ 1301.8 Milk.

Milk means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process and as defined pursuant to prevailing standards of identity.

§ 1301.9 Handler.

Handler means:

(a) Any person, except a producer-handler, who operates a pool plant;

(b) Any person who operates a partially regulated plant;

(c) Any person who operates any other plant, or a pool bulk tank unit as defined under the Federal order, from which fluid milk products are disposed of, directly or indirectly, in the regulated area;

(d) Any cooperative association with respect to the milk that is moved from farms in tank trucks operated by, or under contract to, the association to pool plants or as diverted milk to non pool plants for the account of, and at the direction of, the association. The association shall be considered as the handler who received the milk from the dairy farmers. However, the cooperative association shall not be the handler with respect to the milk moved from any farm if the association and the operator of the pool plant to which milk from such farm is moved both submit a request in writing, on or before the due date for filing the monthly reports of receipts and utilization, that the operator of the pool plant be considered as the handler who received the milk from the dairy farmer, and the pool plant operator's request states that the pool plant operator is purchasing the milk from such farm on the basis of the farm bulk tank measurement readings and the butterfat tests of samples of the milk taken from the farm bulk tank; or

(e) Any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets packaged fluid milk products received from any plant described in paragraph (a), (b) or (c) of this section. Any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any pool, partially regulated or nonpool plant, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. Persons who qualify as handlers only under this

paragraph are not subject to the payment provisions of §§ 1307.3 and 1308.1.

[62 FR 29639, May 30, 1997, as amended at 65 FR 16120, Mar. 27, 2000]

§ 1301.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the regulated area during the month;

(b) Receives milk solely from own farm production or receives milk that is fully subject to the pricing and pooling provisions of any Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the compact commission that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

[65 FR 16120, Mar. 27, 2000]

§ 1301.11 Producer.

Producer means:

(a) A dairy farmer who produces milk in the regulated area that is moved to a pool plant or a partially regulated plant, having Class I distribution in the regulated area;

(b) A dairy farmer who produces milk outside of the regulated area that is moved to a pool plant, provided that on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm in every December since 1996, all of that milk was physically moved to a pool plant in the regulated area. Or: to be considered a qualified producer, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the current month and for five (5) months subsequent to July of the preceding calendar year, all of that milk must have moved to a pool plant, provided that the total amount of milk at a pool plant eligible to qualify producers who did not qualify in every December since 1996, shall not exceed the total bulk receipts of fluid milk products less:

(1) Producers receipts as described in paragraph (a) of this section and producer receipts as described in paragraph (b) of this section who are qualified based on every December since 1996;

(2) The volume of milk excluded from producer milk pursuant to §§ 1301.23 (d) and (e), and 1304.2 (c) and (d).

(c) A dairy farmer who produces milk outside of the regulated area that is moved to a partially regulated plant and allocated to Class I pursuant to Section 1304.5. However, the term shall not include:

(1) A producer handler;

(2) A dairy farmer who is a local or state government that has non-producer status for the month under section § 1301.13(c);

(3) A dairy farmer who is a governmental agency that is operating a plant from which there is route disposition in the regulated area;

(4) Dairy farmer milk received at a pool plant or a partially regulated plant which is rejected and segregated in the handler's normal operations for receiving milk and which receipts are accepted and disposed of by the handler as salvaged product rather than milk.

[62 FR 29639, May 30, 1997, as amended at 62 FR 62825, Nov. 25, 1997; 63 FR 65523, Nov. 27, 1998; 65 FR 16121, Mar. 27, 2000]

§ 1301.12 Producer milk.

Producer milk means milk that the handler has received from producers and is physically moved to a pool plant in the regulated area or is diverted pursuant to § 1301.23(d). The quantity of milk received by a handler from producers shall include any milk of a producer that was not received at any plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month. Such

milk shall be considered as having been received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month, except that in the case of a cooperative association in its capacity as a handler under § 1301.9(d), the milk shall be considered as having been received at a plant in the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of the milk of the cooperative association in such capacity was moved during the current month or the most recent month.

[63 FR 65523, Nov. 27, 1998]

§ 1301.13 Exempt milk.

Exempt milk means:

(a) Fluid milk products received at a pool plant in bulk from a non pool plant to be processed and packaged, for which an equivalent quantity of package fluid milk products is returned to the operator of the non pool plant during the same month, if the receipt of bulk fluid milk products and return of packaged fluid milk products occur during an interval in which the facilities of the non pool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm or similar extraordinary circumstances completely beyond the non pool plant operator's control;

(b) Packaged fluid milk products received at a pool plant from a non pool plant in return for an equivalent quantity of bulk fluid milk products moved from a pool plant for processing and packaging during the same month, if the movement of bulk fluid milk products and receipt of package fluid milk products occur during an interval in which the facilities of the pool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the pool plant operator's control;

(c) Milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer, if:

(1) The dairy farmer is a State or local government that is not engaged in the route disposition of any of the returned products, and

(2) The dairy farmer has by written notice to the compact commission and the receiving handler, elected non-producer status for a period of not less than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

(d) All fluid milk product disposed outside of the regulated area.

(e) All fluid milk distributed by handlers in eight-ounce containers under open and competitive bid contracts for the school milk contract year with School Food Authorities in New England, as defined by 7 CFR 210.2, to the extent that the school authorities can demonstrate and document that the costs of such milk have been increased by operation of the Compact over-order obligation. In no event shall such increase exceed the amount of the Compact over-order obligation. Documentation of increased costs shall be in accordance with a memorandum of understanding entered into between the Compact Commission and the appropriate state agencies for the school milk contract year. The memorandum of understanding shall include provisions for certification by supplying vendor/processors that their bid and contract cost structures do in fact incorporate the over-order obligation, in whole or in part, and provisions for defining the components of cost structure to be provided in support of such certification. The memorandum shall also establish the procedure for providing reimbursement to the school food authorities, including the scheduling of payments and the amount to be escrowed by the Commission to account for such payments.

[62 FR 29639, May 30, 1997, as amended at 63 FR 10110, Feb. 27, 1998; 64 FR 34514, June 28, 1999]

§ 1301.14 Fluid milk product.

(a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than nine

percent butterfat, that are intended to be used as beverages. Such products include, but are not limited to: Milk, fat-free milk, low fat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated or reconstituted. As used in this Part, the term *concentrated milk* means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk /skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

[65 FR 16121, Mar. 27, 2000]

§ 1301.15 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing nine percent or more butterfat, with or without the addition of other ingredients.

§ 1301.16 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skimmed milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than six percent nonmilk fat (or oil).

§ 1301.17 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary of Agriculture of the United States determines is qualified under the provisions of the Capper-Volstead Act, has full authority in the sale of milk of its members and is engaged in marketing milk or milk products for its members. A federation of two or more cooperatives incorporated under the laws of any state will be considered a cooperative association if all member cooperatives meet the requirements of this section.

[65 FR 16121, Mar. 27, 2000]

§ 1301.18 Person.

Person means any individual, partnership, corporation, association, or other business unit.

§ 1301.19 Route disposition.

Route disposition means distribution of Class I milk by a handler to retail or wholesale outlets, which include vending machines but do not include plants or distribution points. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing and packaging plant.

§ 1301.20 Distributing plant.

Distributing plant means a processing and packaging plant.

§ 1301.21 Supply plant.

Supply plant means a plant at which facilities are maintained and used for washing and sanitizing cans and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled, or it is a plant to which milk is moved from dairy farmers' farms in tank trucks.

§ 1301.22 State dairy regulation.

State dairy regulation means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

§ 1301.23 Diverted milk.

Diverted milk means milk, other than that excluded under § 1301.11 from being considered as received from a producer, that meets the conditions set forth in paragraph (a) or (b) of this section and

is not excluded from diverted milk under paragraph (c) of this section.

(a) Milk that a handler in its capacity as the operator of a pool plant reports as having been moved from a dairy farmer's farm to the pool plant, but which the handler caused to be moved from the farm to another plant, if the handler specifically reports such movement to the other plant as a movement of diverted milk, and the conditions of paragraph (a) (1) or (2) of this section have been met. Milk that is diverted milk under this paragraph shall be considered to have been received at the pool plant from which it was diverted.

(1) During any two (2) months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the month, all of the milk that the handler caused to be moved from that farm was physically received as producer milk at the handler's pool plant or at another of the handler's pool plants that is not longer operated as a plant.

(2) During the current month and not more than five (5) other months subsequent to July of the preceding calendar year, milk from the dairy farmer's farm was received at or diverted from the handler's pool plant as producer milk, and during the current month all of the milk from that farm that the handler reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant in accordance with the preceding provisions of this paragraph.

(b) Milk that a cooperative association in its capacity as a handler under § 1301.9 (d) caused to be moved from a dairy farmer's farm to a plant other than a pool plant if the association specifically reports the movement to such plant as a movement of diverted milk, and the conditions of paragraph (b) (1) or (2) or this section have been met. Milk that is diverted under this paragraph shall be considered to have been received by the cooperative association in its capacity as a handler under § 1301.9 (d).

(1) During any two (2) months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the cooperative association in its capacity as a handler under § 1301.9 (d) caused milk to be moved from the farm as producer milk during the month, all of the milk that the association caused to be moved from the farm was physically received at a pool plant.

(2) During the current month and not more than five (5) other months subsequent to July of the preceding calendar year, the cooperative association in its capacity as a handler under § 1301.9(d) caused milk to be moved from the dairy farmer's farm as producer milk, and during the current month all of the milk from that farm that the cooperative association in its capacity as a handler under § 1301.9(d) reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted by the association in accordance with the preceding provisions of this paragraph.

(c) Milk moved, as described in paragraphs (a) and (b) of this section, from dairy farmer's farms to partially regulated plants in excess of 35 percent in the months of September through November and 45 percent in other months, of the total quantity of producer milk received (including diversions) by the handler during the month shall not be diverted milk. Such milk, and any other milk reported as diverted milk that fails to meet the requirements set forth in this section, shall be considered as having been moved directly from the dairy farmers' farms to the plant of physical receipt, and if that plant is a nonpool plant the milk shall be excluded from producer milk.

(d) Milk moved, as described in paragraphs (a) and (b) of this section, from a dairy farmer's farm to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area, the volume of milk (including milk transferred pursuant to § 1304.2(c)) in excess of the percentage of total producer receipts, pursuant to paragraph

(e) of this section, shall be excluded from producer milk. This paragraph will not apply to milk normally associated with a pool plant which was caused to be diverted because the facilities of the pool plant are temporarily unusable because of fire, flood, storm, equipment failure or similar extraordinary circumstances completely beyond the pool plant operator control, provided both the handler and the operator of the pool plant notify the Commission within two (2) days following such occurrence;

(e) Milk diverted in excess of the following percentage of total producer receipts shall be excluded from producer milk:

	Percent
January, February, July, December	10
March, April, May, June	13
August, September, October, November	8

[62 FR 29639, May 30, 1997, as amended at 63 FR 65523, Nov. 27, 1998]

PART 1303—HANDLERS REPORTS

Sec.

1303.1 Reports of receipts and utilization.
1303.2 Other reports of receipts and utilization.
1303.3 Reports regarding individual producers and dairy farmers.
1303.4 Notices to producers.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 62 FR 29642, May 30, 1997, unless otherwise noted.

§ 1303.1 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for such month to the compact commission, in the detail and on the forms prescribed by the compact commission as follows:

(a) Each handler, with respect to each of the handler's pool plants shall report the quantities of fluid milk products contained in or represented by:

(1) Receipts of producer milk (including the specific quantities of diverted milk and receipts from the handler's own production);

(2) Receipts of milk from cooperative association in their capacity as handlers under § 1301.9(d);

(3) Receipts of fluid milk products from other pool plants;

(4) Receipts of fluid milk products from partially regulated plants;

(5) Inventories at the beginning and end of the month of fluid milk products;

(6) All Class I utilization or disposition of milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler described in § 1301.9 (d) shall report:

(1) The quantities of all fluid milk product contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler shall report bulk milk received at a handler's pool plant from a cooperative association in its capacity as the operator of a pool plant or as a handler under § 1301.9 (d), if such milk was rejected by the handler subsequent to such handler's receipt of the milk on the basis that it was not of marketable quality at the time the milk was delivered to the handler's plant, and such milk was removed from the plant in bulk form by the cooperative association and was replaced in the other milk from the association. Except for purposes of this paragraph and § 1303.2 (a), such milk that was so removed from the handler's plant shall be treated for all other purposes of the pricing regulation as though it had not been delivered to and received at the handler's plant.

(e) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to the handler's receipts and utilization of milk, filled milk, and milk products in such manner as the compact commission may prescribe.

(f) Any handler who operates a pool plant which has no Class I disposition and receives no milk from producers is exempted from reporting to the compact commission under this section.

§ 1303.2 Other reports of receipts and utilization.

(a) Each handler who intends to have a receipt of unmarketable milk replaced with the other milk in the manner described under § 1303.1 shall give the compact commission, at the request and in accordance with instructions of the compact commission, advance notice of the handler's intention to have such milk replaced.

(b) In addition to the reports required pursuant to paragraph (a) of this section and § 1303.1 and § 1303.3 each handler shall report such other information as the compact commission deems necessary to verify or establish such handler's obligation under the order.

§ 1303.3 Reports regarding individual producers and dairy farmers.

(a) Each handler shall report on or before the 15th day after the end of each month the information required by the compact commission with respect to producer additions, producer withdrawals, changes in farm locations, and changes in the name of farm operators.

(b) Each handler that is not a cooperative association, upon request from any such association, shall furnish it with information with respect to each of its producer members from whose farm the handler begins, resumes, or stops receiving milk at his pool plant. Such information shall include the applicable date, the producer-member's post office address and farm location, and, if known, the plant at which his milk was previously received, or the reason for the handler's failure to continue receiving milk from his farm. In lieu of providing the information directly to the association, the handler may authorize the compact commission to furnish the association with such information, derived from the handler's reports and records.

(c) Each handler shall submit to the compact commission within ten (10) days after their request made not earlier than twenty (20) days after the end of the month, his producer payroll for the month, which shall show for each producer:

(1) The daily and total pounds of milk delivered and its average butterfat test; and

(2) The net amount of the handler's payments to the producer, with the prices, deductions, and charges involved.

§ 1303.4 Notices to producers.

Each handler shall furnish each producer from whom he receives milk the following information regarding the weight and butterfat test of the milk:

(a) Whenever he receives milk from the producer on the basis of farm bulk tank measurements, the handler shall give the producer at the time the milk is picked up at the farm a receipt indicating the measurement and the equivalent pounds of milk received;

(b) Whenever he receives milk from the producer on a basis other than farm bulk tank measurements, the handler shall give the producer within three (3) days after receipt of the milk a written notice of the quantity so received;

(c) If butterfat tests of the producer's milk are determined from fresh milk samples, the handler shall give the producer within ten (10) days after the end of each month a written notice of the producer's average butterfat test for the month. Such notice shall not be required if the handler has given the producer a written notice of the butterfat test for each of the sampling periods within the month; and

(d) If butterfat tests of the producer's milk are determined from composite milk samples, the handler shall give the producer within seven (7) days after the end of each sampling period a written notice of the producer's average butterfat test for the period.

PART 1304—CLASSIFICATION OF MILK

Sec.

1304.1 Classification of milk.
1304.2 Classification of transfers and diversions.
1304.3 General classification rules.
1304.4 Classification of producer milk at a pool plant.

1304.5 Classification of producer milk at a partially regulated plant.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 62 FR 29643, May 30, 1997, unless otherwise noted.

§ 1304.1 Classification of milk.

All fluid milk products required to be reported by a handler pursuant to this section shall be classified as follows:

(a) Class I milk shall be all fluid milk products disposed of in the regulated area, and in packaged inventory of fluid milk products at the end of the month, except as otherwise provided in paragraphs (b), (c), and (d) of this section;

(b) Fluid milk products:

(1) Disposed of in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or six percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of or diverted to a commercial food processor if the compact commission is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form:

(iii) Aerated cream, frozen cream, sour cream and sour half-and-half, sour cream mixtures containing nonmilk items, yogurt and any other semi-solid product;

(iv) Custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(c) All fluid milk products:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheeses of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat and butteroil;

(iii) Any milk product in dry form, except nonfat dry milk;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i)–(iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (v)(4) (i)–(iv) of this section, that are dumped by a handler. The compact commission may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of such use, if advance notification of such dumping is not possible, or if the compact commission so requires, the

handler must notify the compact commission on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the compact commission.

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1301.14 and the fluid cream product definition pursuant to § 1301.15.

(d) All fluid milk products used to produce nonfat dry milk.

[62 FR 29643, May 30, 1997, as amended at 65 FR 16121, Mar. 27, 2000]

§ 1304.2 Classification of transfers and diversions

(a) *Transfers and diversions to pool plants.* Fluid milk products transferred or diverted from a pool plant to another pool plant or partially regulated plant shall be classified as Class I milk unless the operators of both plants request not to classify it Class I. In either case, the classification of such transfers or diversion shall be subject to the following conditions;

(1) The fluid milk products classified in Class I shall be limited to the amount of fluid milk products, respectively, remaining in Class I at the transferee-plant or diverted-plant.

(2) [Reserved]

(b) *Transfers and diversions to producers-handlers.* Fluid milk products transferred or diverted from a pool plant to a producer-handler shall be classified as Class I.

(c) *Transfers to plants located outside of the regulated area.* Fluid milk products (not including bulk transfers of skim milk, condensed milk, bulk milk transferred and classified Class I by a federal market order and milk processed (i.e., pasturized, homogenized, or blended) transferred in bulk from a pool plant to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area, the volume of milk (including milk diverted pursuant to § 1301.23(d)) in excess of the percentage of total producer receipts, pursuant to paragraph (d) of this section, shall be excluded from producer milk. The transferred milk excluded pursuant to this paragraph shall be prorated to all sources of milk received at this plant unless the operator of the plant selects the sources to be excluded. This paragraph will not apply to any pool plant in which the facilities are temporarily unusable because of fire, flood, storm, equipment failure or similar extraordinary circumstances completely beyond the pool plant operator's control; provided, the operator of the pool plant notifies the Commission within two (2) days following such occurrence;

(d) Milk transferred in excess of the following percentages of total producer receipts shall be excluded from producer milk:

	Percent
January, February, July, December	10
March, April, May, June	13
August, September, October, November	8

[62 FR 29643, May 30, 1997, as amended at 63 FR 65524, Nov. 27, 1998]

§ 1304.3 General classification rules.

In determining the classification of producer milk pursuant to § 1304.4, the following rules shall apply:

(a) Each month the compact commission shall correct for mathematical and other obvious errors all reports filed pursuant to § 1303.1 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1301.9(d) the pounds of skim milk and butterfat, respectively, in Class I in accordance with §§ 1304.1 and 1304.2;

(b) The classification of producer milk for which a cooperative association is the handler pursuant to § 1301.9(d) shall be determined separately from the operations of any pool plant operated by such cooperative; and

(c) If receipts from more than one pool plant are to be assigned, the receipts shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the lowest-numbered zone for assignments to Class I milk.

§ 1304.4 Classification of producer milk at a pool plant.

For each month the compact commission shall determine the classification of producer milk of each handler described in § 1301.9(a) for each of the handler's pool plants separately and of each handler described in § 1301.9(d) by allocating the handler's receipts of fluid milk products to the handler's utilization pursuant to paragraphs (a) and (b) of this section.

(a) Fluid milk products shall be allocated in the following manner:

(1) Subtract from the total pounds of fluid milk products in Class I the pounds of fluid milk products in:

(i) Beginning inventory packaged fluid milk products;

(ii) Receipts of Class I fluid milk products from other pool plants and partially regulated plants;

(iii) Disposition of Class I fluid milk products outside of the regulated area;

(iv) Receipts of exempt fluid milk products pursuant to section 1301.13 (a), (b), and (c).

(b) The quantity of producer milk in Class I shall be the combined pounds of fluid milk product remaining in Class I.

§ 1304.5 Classification of producer milk at a partially regulated plant.

For each month the compact commission shall determine the classification of producer milk of each handler described in § 1301.9(b) for each of the handler's partially regulated plants separately by allocating the handler's receipts of fluid milk products to the handler's utilization pursuant to paragraphs (a) through (c) of this section.

(a) Subtract from the total pounds of fluid milk products in Class I the pounds of fluid milk products in:

(1) Receipts of Class I fluid milk products from pool plants if reported and classified Class I by the pool plant;

(2) Disposition of Class I fluid milk products outside of the regulated area;

(3) Receipts of exempt fluid milk products pursuant to Section 1301.13 (a), (b), and (c) of this chapter.

(b) The quantity of producer milk in Class I shall be the combined pounds of fluid milk product remaining in Class I, not to exceed the total pounds of fluid milk products disposed of in the regulated area.

(c) Producer milk will be allocated pursuant to paragraph (b) of this section in the following manner:

(1) Receipts from producers located in the regulated area;

(2) Receipts of diverted pool milk;

(3) Receipts from producers not located in the regulated area shall then be assigned to any remaining Class I in the regulated area.

[62 FR 29643, May 30, 1997, as amended at 62 FR 62825, Nov. 25, 1997]

PART 1305—CLASS PRICE

Sec.

1305.1 Compact over-order class I price and compact over-order obligation.
1305.2 Announcement of compact over-order class I price and compact over-order obligation.
1305.3 Equivalent price.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 62 FR 29644, May 30, 1997, unless otherwise noted.

§ 1305.1 Compact over-order class I price and compact over-order obligation.

The compact over-order Class I price per hundredweight of milk shall be as follows:

(a) The class I price shall be $16.94 per hundredweight.

(b) The compact over-order obligation shall be computed as follows:

(1) The compact Class I price ($16.94);

(2) Deduct Class I Price for Suffolk County, Massachusetts.

(3) The remainder shall be the compact over-order obligation.

[62 FR 62825, Nov. 25, 1997, as amended at 65 FR 16121, Mar. 27, 2000]

§ 1305.2 Announcement of compact over-order class I price and compact over-order obligation.

The compact commission shall announce publicly on or before the 23rd day of each month the Class I over-

order price and the compact over-order obligation for the following month.

[65 FR 16121, Mar. 27, 2000]

§ 1305.3 Equivalent price.

If, for any reason, a price specified in this part for use in computing class prices or for other purposes is not reported or published in the manner described in this part, the compact commission shall use one determined by the commission to be equivalent to the price that is specified.

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

Sec.

1306.1 Handler's value of milk for computing basic over-order producer price.
1306.2 Partially regulated plant operator's value of milk for computing basic over-order producer price.
1306.3 Computation of basic over-order producer price.
1306.4 Announcement of basic over-order producer price.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 62 FR 29644, May 30, 1997, unless otherwise noted.

§ 1306.1 Handler's value of milk for computing basic over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1301.9(d) of this chapter with respect to milk that was not received at a pool plant, as directed in this section. Any pool plant that does not exceed 150,000 pounds of disposition in the compact regulated area in the month shall not be subject to the compact over-order obligation. The total assessment for each handler is to be calculated by multiplying the pounds of Class I fluid milk products as determined pursuant to § 1304.1(a) of this chapter by the compact over-order obligation.

[65 FR 16121, Mar. 27, 2000]

§ 1306.2 Partially regulated plant operator's value of milk for computing basic over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk disposition in the regulated area by the operator of a partially regulated plant as directed in this section. Any partially regulated plant that does not exceed 150,000 of disposition in the compact regulated area in the month shall not be subject to the compact over-order obligation. The total assessment for each handler is to be calculated by multiplying the pounds of Class I fluid milk products as determined pursuant to § 1304.1(a) of this chapter by the compact over-order obligation.

[65 FR 16121, Mar. 27, 2000]

§ 1306.3 Computation of basic over-order producer price.

The compact commission shall compute the basic over-order producer price per hundredweight applicable to milk received at plants as follows:

(a) Combine into one total the values computed pursuant to § 1306.1 and § 1306.2 of this chapter for all handlers from whom the compact commission has received at the Compact Commission's office prior to the 9th day after the end of the month the reports for the month prescribed in § 1303.1 and the payments for the preceding month required under § 1307.3 (a) of this chapter.

(b) Subtract 3% of the total value computed pursuant to paragraph (a) above for the purpose of retaining a reserve for WIC pursuant to the Formal Agreement for reimbursement of WIC Program costs entered into between the Commission and the six New England State WIC Program Directors, as approved by the Food and Consumer Service of the United States Department of Agriculture (USDA);

(c) In any month when the average percentage increase in production in the regulated area comes within 0.25 of the average percentage increase in production for the nation, subtract from the total value computed pursuant to paragraph (a) above, for the purpose of retaining a reserve, an amount estimated by the Commission in consultation with the USDA for anticipated

costs to reimburse the Commodity Credit Corporation (CCC) at the end of its fiscal year for any surplus milk purchases. Should those funds not be needed because no surplus purchases were made by the CCC at the end of its fiscal year, it is to be disbursed as follows:

(1) Any producer who has received payment from a handler pursuant to § 1307.4 shall become eligible to receive a pro rata disbursement by submitting to the Commission documentation that the producer did not increase production of milk during and after the month on which the regional rate of production increase met or exceeded the national rate of production increase, as compared to the same period in the preceeding year. Such documentation shall be filed with the Commission not later than 45 days after the end of the fiscal year.

(2) The Commission shall calculate the amount of refund to be provided to each eligible producer by taking into account the total amount of retained proceeds, the total production of milk by all producers eligible for refunds, and the total amount of production by each eligible producer.

(d) Beginning with the August 1998 pool, subtract from the total value computed pursuant to paragraph (a) of this section, an amount estimated by the Commission for the purpose of retaining a reserve for payment of obligations pursuant to § 1301.13(e) of this chapter. Surplus funds from this reserve shall be returned to the producer-settlement fund.

(e) Subtract 7.5 cents per hundredweight from the basic over-order producer price computed pursuant to this section and deposit that amount in the supply management-settlement fund, provided that the resultant over-order producer price is at least 25 cents.

(f) Add an amount equal to not less than one-half of the unobligated balance of the producer-settlement fund at the close of business on the 8th day after the end of the month;

(g) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a value is computed pursuant to § 1306.2(a); and

(h) Subtract not less than four (4) cents nor more than five (5) cents for the purpose of retaining a cash balance in the producer-settlement fund. The result shall be the basic over-order producer price for the month.

[62 FR 62826, Nov. 25, 1997, as amended at 63 FR 46388, Sept. 1, 1998; 65 FR 34580, May 31, 2000]

§ 1306.4 Announcement of basic over-order producer price.

The compact commission shall announce publicly on or before: The 13th day after the end of each month the over-order producer price resulting from the adjustment of the basic over-order producer price for such month, as computed under § 1306.3.

PART 1307—PAYMENTS FOR MILK

Sec.

1307.1 Producer-settlement fund.
1307.2 Handlers' producer-settlement fund debits and credits.
1307.3 Payments to and from the producer-settlement fund.
1307.4 Method of payment.
1307.5 Payments to producers.
1307.6 Statements to producers.
1307.7 Adjustment of accounts.
1307.8 Charges on overdue accounts.
1307.9 Dates.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 62 FR 29645, May 30, 1997, unless otherwise noted.

§ 1307.1 Producer-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the *producer-settlement fund*. It shall deposit into the fund all amounts received from handlers under § 1307.3, § 1307.7, and § 1307.8 of this Chapter and the amount subtracted under § 1306.3(h). It shall pay from the fund all amounts due handlers under § 1307.3, § 1307.7, and § 1307.8 and the amount added under § 1306.3(d) subject to their right to offset any amounts due from the handler under these sections and under § 1308.1 of this chapter.

(b) All amounts subtracted under § 1306.3(h), including interest earned thereon, shall remain in the producer-

settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1306.3(d).

(c) The compact commission shall place all monies subtracted under § 1306.3(b), 1306.3(c), 1306.3(d), and 1306.3(h) in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities.

[62 FR 62826, Nov. 25, 1997, as amended at 65 FR 34580, May 31, 2000]

§ 1307.2 Handlers' producer-settlement fund debits and credits.

On or before the 13th day after the end of the month, the compact commission shall render a statement to each handler showing the amount of the handler's producer-settlement fund debit or credit, as calculated in this section.

(a) The producer-settlement fund debit for each plant and each cooperative association in its capacity as a handler under § 1301.9 (d) of this chapter shall be the value computed pursuant to §§ 1306.1 and 1306.2.

(b) The producer-settlement fund credit for each plant and each cooperative association in its capacity as a handler under § 1301.9 (d) shall be computed as specified in this paragraph.

(1) Multiply the quantities of producer milk that were reported by pool plants pursuant to § 1303.1 and the quantities or route disposition in the marketing area by partially regulated plants for which a value was determined pursuant to § 1306.2(a) by the basic over-order producer price computed under § 1306.3.

(2) For any cooperative association in its capacity as a handler under § 1301.9 (d), multiply the quantities of all producer milk reported pursuant to § 1303.1(c) by the basic over-order producer price computed under § 1306.3.

[62 FR 62826, Nov. 25, 1997, as amended at 65 FR 16121, Mar. 27, 2000]

§ 1307.3 Payments to and from the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the compact commission the handler's producer-settlement fund debit for the month as determined under Sec. 1307.2(a).

(b) On or before the 16th day after the end of the month, the compact commission shall pay to each handler the handler's producer-settlement fund credit for the month as determined under Sec. 1307.2(b). If the unobligated balance in the producer-settlement fund is insufficient to make such payments, the compact commission shall reduce uniformly such payments and shall complete them as soon as the funds are available.

[65 FR 16122, Mar. 27, 2000]

§ 1307.4 Method of payment.

If the combined total of the handler's producer-settlement fund debit for the month as determined under § 1307.2(a) and the handler's obligation for the month as determined under § 1308.1 of this chapter is greater than $25,000, then the handler must make payment to the compact commission by electronic transfer of funds on or before the 18th day after the end of the month.

[64 FR 23538, May 3, 1999]

§ 1307.5 Payments to producers.

(a) For milk received during the month, payment shall be made so that it is received by each producer no later than the day after the payment date required in section 1307.3(b). Each handler shall make payment to each producer for the milk received from him during the month at not less than the basic over-order producer price per hundredweight computer under Sec. 1306.3. If the handler has not received full payment for the compact commission under Sec. 1307.3(b) by the date payments are due under this paragraph, he may reduce pro rata his payments to producers by an amount not to exceed such underpayment. Such payments shall be completed after receipt of the balance due from the compact commission by the next following date for making payments under this paragraph.

(b) If the handler's net payment to a producer is for an amount less than the total amount due the producer under this section, the burden shall rest upon the handler to prove to the compact

commission that each deduction from the total amount due is properly authorized and properly chargeable to the producer.

(c) In making payment to producers under paragraph (b) of this section for milk diverted from a pool plant the handler may elect to pay such producers at the price of the plant from which the milk was diverted, if the resulting net payment to each producer is not less than the otherwise required under this section and the rate of payment and the deduction shown on the statement required to be furnished under § 1307.6 are those used in computing the payment.

(d) If a handler claims that the required payment cannot be made because the producer is deceased or cannot be located, such payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the compact commission shall make such payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) If not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the compact commission findings upon verification as provided above such payment shall be made to the producer-settlement fund and shall be held in reserve until such time as the abovementioned proceedings have been completed or until the handler submits proof to the compact commission that the required payment has been made to the producer in which latter event the payment shall be refunded to the handler.

(f) At a partially regulated plant each handler shall make payments, on a pro rata basis, to all producers and dairy farmers for milk (excluding diverted pool producer milk) received from them during the month, the payment received pursuant to § 1307.3(b).

[62 FR 29645, May 30, 1997, as amended at 62 FR 62827, Nov. 25, 1997. Redesignated at 64 FR 23538, May 3, 1999, as amended at 65 FR 16122, Mar. 27, 2000]

§ 1307.6 Statements to producers.

In making the payments to producers required under § 1307.4, each handler and each cooperative shall furnish each producer, in addition to the information required under Federal and State regulations, a supporting statement, in such form acceptable to the commission, which shall show: The rate and amount of the compact over-order producer price.

§ 1307.7 Adjustment of accounts.

(a) Whenever the compact commission verification of a handler's reports or payments discloses an error in payments to or from the compact commission under Sec. 1307.3 or Sec. 1308.1, the compact commission shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Adjustment charge bills issued during the period beginning with the 10th day of the prior month and ending with the 9th day of the current month shall be payable by the handler to the compact commission on or before the 15th day of the current month. Adjustment credits issued during that period shall be payable by the compact commission to the handler on or before the 16th day of the current month.

(b) Whenever the compact commission's verification of a handler's payments discloses payment to a producer or a cooperative association of an amount less than is required by Sec. 1307.4, the handler shall make payment of the balance due the producer not later than the 16th day after the end of the month in which the handler is notified of the deficiency.

[65 FR 16122, Mar. 27, 2000]

§ 1307.8 Charges on overdue accounts.

Any unpaid obligation due the compact commission from a handler pursuant to the provisions of 7 CFR parts 1307 and 1308 shall be increased 1.0 percent each month beginning with the day following the date such obligation was due under the regulation. Any remaining amount due shall be increased at the same rate on the corresponding day of each succeeding month until paid. The amounts payable pursuant to this section shall be computed monthly

on each unpaid obligation and shall include any unpaid charges previously computed pursuant to this section. The late charges shall accrue to the administrative assessment fund. For the purpose of this section, any obligation that was determined at a date later than prescribed by 7 CFR parts 1307 and 1308 because of a handler's failure to submit a report to the compact commission when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

[65 FR 16122, Mar. 27, 2000]

§ 1307.9 Dates.

If a date required for payment contained in 7 CFR parts 1307 and 1308 falls on a Saturday, Sunday, or national holiday, such payment will be due on the next day that the compact commission office is open for public business.

[65 FR 16122, Mar. 27, 2000]

PART 1308—ADMINISTRATIVE ASSESSMENT

Sec.
1308.1 Assessment for pricing regulations administration.
1308.2 Method to waive or change the administrative assessment.

AUTHORITY: 7 U.S.C. 7256.

§ 1308.1 Assessment for pricing regulations administration.

On or before the 15th day after the end of the month, each handler shall pay to the compact commission his pro rata share of the expense of administration of this pricing regulation. The payment shall be at the rate of 3.2 cents per hundredweight. The payment shall apply to:

(a) The quantity of fluid milk products disposed in the regulated area from a pool plant for which a value is determined under § 1306.1;

(b) The quantity of fluid milk products disposed in the regulated area from a cooperative association in its capacity as a handler under Section 1301.9(d) for which a value is determined under Section 1306.1; and

(c) The quantity distributed as route disposition in the regulated area from a partially regulated plant for which a value is determined under § 1306.2.

[62 FR 29646, May 30, 1997, as amended at 64 FR 23538, May 3, 1999; 65 FR 16122, Mar. 27, 2000]

§ 1308.2 Method to waive or change the administrative assessment.

The compact commission may waive or change the assessment for pricing regulation administration to maintain the operating reserve in the range of 80% to 120% of four months operating expenses, as determined in the budget approved by the compact commission. The compact commission will announce, pursuant to § 1305.2 of this chapter, the waiver or change in rate of assessment.

[64 FR 23538, May 3, 1999]

PART 1309—SUPPLY MANAGEMENT REFUND PROGRAM

Sec.
1309.1 Producer qualification for supply management refund program.
1309.2 Computation of supply management refund prices.
1309.3 Supply management-settlement fund.
1309.4 Payment to producers of supply management refund.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 65 FR 34580, May 31, 2000, unless otherwise noted.

§ 1309.1 Producer qualification for supply management refund program.

A dairy farmer who is a qualified producer pursuant to § 1301.11(a) or (b) of this chapter for the entire refund year, July 1 through June 30, and the dairy farmer's milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding refund year.

§ 1309.2 Computation of supply management refund prices.

The compact commission shall compute the supply management refund prices applicable to all qualified milk as follows:

(a) Combine into one total the values, including all interest earned, deducted pursuant to § 1306.3(e) of this chapter for the refund year;

(b) Subtract 50% from the total value computed pursuant to paragraph (a) of this section to be used for the per farm payments to producers who submitted documentation pursuant to § 1309.4(a);

(c) Divide the resulting amount by the sum of all milk production reported by producers qualified pursuant to § 1309.1 and who submitted documentation pursuant to § 1309.4(a).

§ 1309.3 Supply management-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the supply management-settlement fund. It shall deposit into the fund all amounts deducted pursuant to § 1306.3(e) of this chapter. It shall pay from the fund all amounts due producers pursuant to § 1309.4;

(b) All amounts subtracted under § 1309.2(c), including interest earned thereon, shall remain in the supply management-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1309.4;

(c) The compact commission shall place all monies subtracted under § 1306.3(e) of this chapter in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities;

(d) If, after payments to producers of supply management refund pursuant to § 1309.4 there is a surplus in the fund, it is to be returned to the producer-settlement fund.

(e) The supply management program will continue through the operation of the compact over-order price regulation. If the refund year is six months or less, the supply management-settlement fund is to be returned to the producer-settlement fund.

§ 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to § 1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to § 1309.2 by submitting to the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year. Such documentation shall be filed with the commission not later than 45 days after the end of the refund year.

(b) The commission will make payment to all producers qualified pursuant to § 1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to § 1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management refund price computed pursuant to § 1309.2(e) by the producer's milk pounds, not to exceed $12,000.

PART 1361—RULEMAKING PROCEDURES

Sec.
1361.1 Applicability.
1361.2 Commencement of proceedings.
1361.3 Notice.
1361.4 Submission of written comment and exhibits independent of the hearing.
1361.5 Conduct of the hearing.
1361.6 Availability of the transcript.
1361.7 Additional comment and proposed findings by interested persons.
1361.8 Commission deliberation and decision; proposed regulation; proposed findings.
1361.9 Effective date of regulation.
1361.10 Handler's right to petition for administrative review; Judicial review.
1361.11 Ex parte communications.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 63 FR 37756, July 14, 1998, unless otherwise noted.

§ 1361.1 Applicability.

This section applies to:

(a) The establishment of a compact over-order price regulation, as defined in subsection 2(8) of the Compact, including any provision with respect to milk supply under subsection 9(f) of the Compact;

(b) Any amendment of such over-order price regulation or provision with respect to milk supply; and

(c) Any process initiated by the Compact Commission in which the subjects and issues involved relate to such price regulation or provision with respect to

milk supply or, proposed amendment thereto.

§ 1361.2 Commencement of proceedings.

(a) *Upon the Commission's initiative.* The Compact Commission may commence a rulemaking proceeding on its own initiative, including upon the recommendation of the Committee on Regulations and Rulemaking.

(b) *Upon the request of a state delegation.* A state delegation may request the initiation of a rulemaking proceeding by presenting its request to the Committee on Regulations and Rulemaking. The Committee on Regulations and Rulemaking shall make a recommendation to the Compact Commission, through the Chair, as to whether the state delegation's request should be pursued; provided that the state delegation may in any event place its request before the Compact Commission for its consideration.

(c) *Upon petition of any person or organization.* In its sole discretion, the Compact Commission may commence a rulemaking proceeding upon petition of any person. Such persons or organizations may include individual milk producers or handlers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

(1) A person or organization petitioning for commencement of a rulemaking proceeding shall submit to the Compact Commission a statement in support of the petition. This statement shall include a brief written explanation of how the proposal will promote the purposes of the Compact.

(2) Petitions submitted under this paragraph shall be forwarded to the Committee on Regulations and Rulemaking for review. If that Committee determines the proposal will tend to promote the purposes of the Compact, the Committee shall notify the Chair of its determination. The Chair shall then convene the Compact Commission to determine whether the Commission desires to initiate a rulemaking proceeding based upon the petition.

(3) If the Committee on Regulations and Rulemaking determines the proposal will not tend to promote the purposes of the Compact, the Committee, through the Chair, shall promptly notify the petitioner of its decision. Notice of denial shall include a brief statement of the grounds for the denial. Upon the request of the petitioner, and in the discretion of the Chair, the Commission may review the denial of a petition by the Committee on Regulations and Rulemaking.

(d) *Commencement of proceedings.* At the discretion of the Compact Commission, the Chair shall commence any rulemaking proceeding. The Chair shall commence the proceeding by serving notice in accordance with § 1361.3.

§ 1361.3 Notice.

(a) *Contents of the notice—subject matter.* Notice filed by the Chair of the Commission shall include a concise summary of the proposed price regulation and provision with respect to milk supply, or proposed amendment, or a concise statement that such regulation or amendment is the subject and issue involved. If for specific, proposed regulation or amendment, the notice shall identify the geographic area and persons to be covered, and a proposed effective date. The notice shall also identify the Compact as the legal authority under which the price regulation is proposed.

(b) *Contents of the notice—date, time and place of hearing.* Notice shall be given of the date, time and place of the hearing to be held by the Compact Commission in accordance with section 11 of the Compact. The date of the hearing shall be at least 15 days after the publication of notice as provided in paragraph (d) of this section.

(c) *Right to provide comment.* The notice shall identify the right of any person to participate in the rulemaking proceeding by the submission of written comment, either as part of, or independent of, the hearing.

(d) *Publication of notice and supplemental publicity.* The Chair shall give notice under this section as follows:

(1) By publication in the FEDERAL REGISTER;

(2) By publication in the official register of each participating state and as otherwise required by the laws of the states. If the laws of a particular state

do not require publication of notice in a newspaper of general circulation within that state, the Compact Commission shall provide for such publication; and

(3) By correspondence to interested persons in accordance with a list of such persons compiled by the Compact Commission. Any interested person may have his or her name added to the list by making a written request to the Compact Commission.

(e) Notice may also be provided by:

(1) Forwarding copies of the notice to the governors of such other states as the Chair determines should be notified; or

(2) At the discretion of the Compact Commission, by issuance of a press release containing the contents of the notice or a summary of the contents of the notice to those newspapers in the area proposed to be subjected to regulation as will reasonably tend to bring the notice to the attention of interested persons; or

(3) Such other notice as directed by the Compact Commission.

§ 1361.4 Submission of written comment and exhibits independent of the hearing.

Any person may submit to the Compact Commission written comment and exhibits independent of the hearing. Comment and exhibits may be submitted at any time until the closing date of the post-hearing comment period established under § 1361.7. The comment and exhibits shall be made part of the record of the rulemaking proceeding if they identify the author's name, address and occupation and if they include a sworn, notarized statement indicating that the comment is presented based upon the author's personal knowledge or belief.

§ 1361.5 Conduct of the hearing.

(a) *Presiding officer*. The Chair of the Commission shall be the presiding officer, or in his or her absence, the Vice-Chair. In the absence of either officer, the Compact Commission shall elect a presiding officer from those members present at the hearing or retain a qualified member of the public to serve as presiding officer.

(b) *Authority of the presiding officer*. The presiding officer shall have the authority to:

(1) Regulate the course of the hearing;

(2) Administer oaths and affirmations;

(3) Rule upon issues of evidence and procedure and receive affidavits; and

(4) Present questions to the Compact Commission for its determination.

(c) *Recording of notice*. At the opening of the hearing, the presiding officer shall certify for the record the provision of notice under § 1361.3.

(d) *Transcript*. The Secretary of the Compact Commission shall cause a complete transcript to be kept of the hearing proceeding. The Secretary shall certify a true copy of the record of all testimony and exhibits entered into evidence.

(e) *Appearance; right to appear*. Any person shall be given an opportunity to appear, either in person or through a representative, subject to reasonable procedures (*e.g.*, regarding time allowed for testimony) established by the presiding officer. Witnesses shall provide their names, addresses and occupations for the record before proceeding to testify. A person acting as representative on behalf of another shall so identify himself or herself, provide his or her name, address and occupation for the record, and shall provide any other information as required by the presiding officer.

(f) *Testimony*. Persons shall be sworn or make affirmation before testifying. Any member of the Compact Commission or designated staff may ask questions of a person giving testimony.

(g) *Evidence*. To the degree possible, evidence shall be presented in a form consistent with the provisions of section 9(e) of the Compact. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons shall be admissible. Evidence that is irrelevant, immaterial or unduly repetitious shall be excluded. As possible, the relevancy of evidence shall be determined by reference to the provisions of section 9(e) of the Compact.

(1) *Exclusion of evidence; objections and offers of proof*. The presiding officer

may act to exclude evidence on his or her own or upon a request by any Compact Commission member. The person testifying may object to a ruling to exclude evidence. The person shall state the reasons for the objection, and provide an offer of proof, consisting of a statement of the substance of the testimony or that which is expected to be shown by the answer; provided that the presiding officer may limit the length of time allowed for the offer of proof. The record shall reflect the objection, the stated basis for the objection and the offer of proof. The presiding officer shall either overrule the objection, and exclude the evidence from the record, or stay a ruling on the objection to permit action by the Compact Commission at a future time. If the Compact Commission, upon consideration of the objection and offer of proof, permits the evidence, it shall reopen the record and allow the testimony to be entered. Only evidence so received by proper objection and offer of proof may be the subject of future consideration. The person testifying shall be notified within three days of the Compact Commission's ruling on the objection.

(2) *Exhibits, documentary and real evidence.* All written statements, charts, tabulations or similar data offered in evidence at the hearing shall be made part of the record upon identification by the witness and upon satisfactory showing of its authenticity, relevance and materiality. At the discretion of the presiding officer, any part of an exhibit that is irrelevant or immaterial may be excluded and the remainder admitted.

(3) *Cost conclusions.* Conclusory statements regarding costs shall be admissible only if supported by actual cost data based on actual operations of producers, handlers or retailers, as appropriate. Projections or estimates of costs shall be considered only where the actual costs or other data upon which such projections or estimates are provided as part of the analysis.

(4) *Commission evidence.* The Compact Commission may introduce the results and data of any inquiry or investigation conducted by the Commission, or any other evidence it deems appropriate. The Commission may also designate as evidence all or part of the record of prior hearings before the Commission.

(5) *Official notice.* The Compact Commission may take official notice of such matters as are judicially noticed by the courts of the United States and any other matter of technical, scientific or commercial fact of established character. Matters taken by official notice shall be so designated in the record. Interested persons shall be given adequate notice of this action, at the hearing or afterward, and opportunity to demonstrate that the facts are inaccurate or were erroneously noticed.

§ 1361.6 Availability of the transcript.

(a) *Availability.* A copy of the hearing transcript shall be available for review at the Compact Commission place of business during its official business hours, within 48 hours of the completion of the hearing, unless otherwise specified by the presiding officer at the close of the hearing.

(b) *Copies.* A copy of the transcript may be obtained upon written request and payment of reasonable cost per page.

§ 1361.7 Additional comment and proposed findings by interested persons.

At the conclusion of the hearing, the presiding officer shall announce that persons who have participated in the hearing may submit comment and proposed findings of fact. The comment or findings, or both, shall be received within fourteen calendar days of the conclusion of the hearing, unless otherwise specified in the published notice of proposed rulemaking. Any proposed findings shall be presented in a form consistent with the finding requirements of § 1361.8, and shall be based solely on evidence included in the record. Page numbers of the transcript, where supporting evidence appears, shall be cited whenever possible.

§ 1361.8 Commission deliberation and decision; proposed regulation; proposed findings.

(a) *Commission deliberation and decision.* The Compact Commission shall

convene as a whole as soon as is practicable after the close of the post-hearing comment period. In accordance with the requirements of section 4 of the Compact, the Commission shall vote to decide whether to propose for referendum a Compact over-order price regulation and provision with regard to milk supply, or amendment thereof. A majority of the individual Commission members, with at least one member from each delegation, shall constitute a quorum for this deliberative meeting of the Compact Commission.

(b) *Proposed regulation.* If approved, the Compact Commission shall devise the proposed price regulation, and provision with respect to milk supply, or an amendment, by incorporating those provisions of sections 9 and 10 of the Compact as are necessary and appropriate. The regulation shall be set forth in sufficient detail so as to provide sufficient notice of its requirements to those subject to the regulation.

(c) *Proposed findings.* If a proposed regulation or amendment is approved, the Compact Commission shall prepare proposed findings of fact, in a form consistent with the requirements of section 12 of the Compact, with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers;

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes;

(3) Whether the major provisions of the regulation or amendment, other than those establishing the Compact over-order price, are in the public interest and are reasonably designed to achieve the purposes of the regulation or amendment; and

(4) The need for a producer referendum in accordance with part 1371.

§ 1361.9 Effective date of regulation.

A Compact over-order price or amendment approved by referendum under part 1371 shall become effective in accordance with a schedule for administration established between the Compact Commission and the applicable Federal Market Order Administrator. Notice of the substance of the approved regulation or amendment, including the effective date, shall be given in accordance with § 1361.3. In addition, the Compact Commission shall ensure actual notice by certified mail, return receipt requested, to all milk processors who will be subject to the terms of the regulation on the effective date. The Compact Commission may provide notice to any other interested persons.

§ 1361.10 Handler's right to petition for administrative review; Judicial review.

(a) *Petition.* In accordance with section 16(b) of the Compact, and pursuant to the provisions of part 1381, any handler subject to an order of the Compact Commission establishing a Compact over-order price regulation may petition the Commission for hearing and review.

(b) *Judicial review.*—In accordance with the provisions of section 16(c) of the Compact, such handler shall have a right to judicial review of the Compact Commission's ruling with respect to the handler's petition for review.

§ 1361.11 Ex parte communications.

(a) Following notice of a rulemaking proceeding, pursuant to § 1361.3, and prior to the conclusion of a producer referendum, or the final decision of the Commission, whichever is later, no Compact Commission member or Commission staff person shall communicate, either directly or indirectly, in connection with the merits of the rulemaking proceeding with any person having an interest in the proceeding or with any representative of such person.

(b) Following notice of a rulemaking proceeding, pursuant to § 1361.3, and prior to the close of the comment period, pursuant to § 1361.7, Compact Commission members shall not discuss among themselves the merits of the rulemaking proceeding.

(c) A Compact Commission member or Commission staff person who receives a written or oral communication prohibited by this section shall disclose the substance of such communication

on the record. As necessary and appropriate, the Commission may act accordingly to nullify the effect of the prohibited communication.

(d) This section shall not be construed to apply to requests for status reports or requests on other procedural matters.

[63 FR 37756, July 14, 1998, as amended at 64 FR 18324, Apr. 14, 1999]

PART 1371—PRODUCER REFERENDUM

Sec.
1371.1 Definitions.
1371.2 Purpose.
1371.3 Referendum procedure.
1371.4 Referendum agent.
1371.5 Confidentiality of ballots.
1371.6 Publication of referendum results.
1371.7 Ballots.
1371.8 Qualified cooperative block vote.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 63 FR 37758, July 14, 1998, unless otherwise noted.

§ 1371.1 Definitions.

As used in this part, and in addition to the terms defined herein, the terms defined in Article II, section 2 of the Compact and in 7 CFR part 1301 shall apply with equal force and effect.

Approved by producers means that at least two-thirds of the eligible producers who cast a vote approve the proposed order or amendment.

Cooperative block vote means a vote of approval or disapproval of a proposed order or amendment, cast in a producer referendum, by a qualified cooperative on behalf of its members or stockholders who are eligible producers.

Eligible producer means a producer who, during the representative period determined by the Commission, has been engaged in the production of milk, the price of which would be regulated under the proposed order or amendment.

Producer referendum means the balloting process by which the Commission determines whether a proposed order or amendment is approved by eligible producers.

Qualified cooperative means a cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of milk, but shall not include any cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers.

Representative period means that period of time designated by the Commission for the purpose of determining who is a producer eligible to participate in a producer referendum.

§ 1371.2 Purpose.

Prior to issuing, or amending, any regulation establishing a Compact over-order price regulation, including any provision with respect to milk supply, the Compact Commission shall conduct a producer referendum for the purpose of ascertaining whether the issuance or amendment of such regulation is approved by producers.

§ 1371.3 Referendum procedure.

The Commission shall certify the referendum procedure at the time it approves a final regulation. The referendum procedure shall include:

(a) A designated representative period for determining eligible producers;

(b) The date by which the ballots will be distributed to eligible producers and qualified cooperatives;

(c) The date by which all qualified cooperatives must mail notices to eligible producer members as required by § 1371.9(b) and (c);

(d) The date by which all ballots must be received at the Commission office;

(e) A designated referendum agent; and

(f) Any other procedures necessary for the conduct of the particular producer referendum.

§ 1371.4 Referendum agent.

The designated referendum agent shall:

(a) Verify all ballots, cast individually or by block vote, with respect to timeliness, producer eligibility, cooperative identification, authenticity and other steps taken to avoid duplication of ballots.

(b) Mark ballots determined to be invalid ''disqualified'' with a notation of

the reason for disqualification. Disqualified ballots shall not be considered in determining approval or disapproval of the regulation.

(c) Compute and certify the following:

(1) The total number of ballots cast;

(2) The total number of ballots disqualified;

(3) The total number of verified ballots cast in favor of the regulation or amendment;

(4) The total number of verified ballots cast in opposition to the regulation or amendment;

(5) Whether two-thirds of all verified ballots were cast in the affirmative.

(d) Report to the Executive Director of the Compact Commission the certified computations and results of the referendum under section (c); and

(e) At the completion of his or her work, seal all ballots, including the disqualified ballots, and submit a final report to the Executive Director stating all actions taken in connection with the referendum. The final report shall include all ballots cast and all other information furnished to or compiled by the Referendum Agent.

§ 1371.5 Confidentiality of ballots.

The ballots cast, the identity of any person or cooperative, or the manner in which any person or cooperative voted, and all information furnished to or compiled by the Referendum Agent shall be regarded as confidential.

§ 1371.6 Publication of referendum results.

The Executive Director shall publish the certified results of the referendum in the FEDERAL REGISTER.

§ 1371.7 Ballots.

(a) The Compact Commission shall prepare and ensure the prompt distribution of a ballot to all eligible producers consistent with the dates prescribed in the referendum procedure under § 1361.3.

(b) The ballot shall describe the terms and conditions of the referendum and be accompanied by an official copy of the proposed regulation or amendment. The ballot shall provide notice that a producer may register his or her approval or disapproval with the Compact Commission either directly or through his or her cooperative. The ballot shall indicate that any qualified cooperative eligible to block vote must provide written notice to each eligible producer as to whether and how it intends to cast its vote. The notice shall also identify the final due date for the Commission's receipt of the completed ballot.

§ 1371.8 Qualified cooperative block vote.

(a) Qualified cooperatives may block vote on behalf of their eligible producer members in accordance with section 13(c) of the Compact. The Compact Commission shall ensure that each qualified cooperative is notified of its right to cast a block vote on behalf of eligible members in each producer referendum by the date prescribed pursuant to § 1371.3(b).

(b) A qualified cooperative shall, before casting its ballot in any referendum, give prior written notice to each of its eligible producers of how it intends to cast its vote. The notice and ballot shall be on the form provided by the Commission and shall be mailed by the cooperative to eligible producer members as prescribed in the producer referendum procedure pursuant to § 1371.3. The notice shall make express reference to the ballot documentation provided by the Compact Commission, and may include a copy of such documentation.

(c) Any qualified cooperative that does not intend to block vote shall give written notice to each of its members on a form approved by the Compact Commission. The notice shall be mailed by the cooperative to eligible producer members as prescribed in the producer referendum procedure pursuant to § 1371.3. The notice shall make express reference to the ballot documentation provided by the Compact Commission, and may include a copy of such documentation.

(d) Each qualified cooperative shall certify to the Compact Commission, on the form provided by the Commission, that it is qualified to block vote and that it has provided proper and timely notice of either the ballot cast or of the decision that the cooperative is not casting a block vote. The cooperative

shall mail a copy of the notice to the Commission no later than two days after mailing of notice to members. Cooperatives that are voting shall also submit the original executed ballot in a separate envelope marked ''Referendum Ballot,'' or as otherwise provided in the referendum procedure pursuant to § 1371.3.

(e) If the ballot submitted to the Commission by a qualified cooperative differs in any significant way from the notice of its ballot sent to member producers, then the Commission may take appropriate remedial action.

(f) A producer who is a member of a cooperative that has provided notice of its intent to cast a block vote to approve or not to approve a proposed order or not to cast a block vote and who by ballot expresses his approval or disapproval of the proposed order, shall notify the Compact Commission as to the name of the cooperative of which he or she is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote. If the producer lists the name of a cooperative that is different from the cooperative identified by the ballot number, as determined by the representative period for the referendum, the latter will control.

PART 1381—RULES OF PRACTICE GOVERNING PROCEEDINGS ON PETITIONS TO MODIFY OR TO BE EXEMPTED FROM COMPACT OVER-ORDER PRICE REGULATIONS

Sec.

1381.1 Definitions.
1381.2 Institution of proceedings.
1381.3 Contents of petition.
1381.4 Conduct of proceedings.
1381.5 Judicial appeal; escrow.

AUTHORITY: U.S.C. 7256.

SOURCE: 62 FR 35065, June 30, 1997, unless otherwise noted.

§ 1381.1 Definitions.

As used in this part, the terms defined in Article II, section 2 of the Compact shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) *Administrative assessment* shall include the assessment imposed upon Handlers under 7 CFR 1308.1 for their pro rata share of the expense of administering a Compact pricing regulation, as announced each month by the Federal Order #1 Market Administrator and authorized under 7 U.S.C. 7256.

(b) *Chair* shall mean the Chair of the Northeast Dairy Compact Commission.

(c) *Handler* shall mean any person subject to a Compact Over-order price regulation or administrative assessment, or to whom a Compact Over-order price or administrative assessment is sought to be made applicable.

(d) *Compact Over-order price regulation* shall mean the prices regulated under the provisions of 7 CFR parts 1300, 1301, 1303–1307, as announced each month by the Federal Order #1 Market Administrator and authorized under 7 U.S.C. 7256.

(e) *Order* shall include a Compact Over-order price regulation.

§ 1381.2 Institution of proceedings.

Any handler desiring to complain that any order, Compact over-order price, or administrative assessment, or any provision of such order or assessment, or any obligation imposed in connection therewith is not in accordance with law shall file with the Commission a petition in writing, along with 5 copies of the same.

§ 1381.3 Contents of petition.

A petition shall contain:

(a) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions, held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner.

(b) Reference to the specific terms or provisions of the regulation, order, or notice of administrative assessment, or the interpretation or application thereof, which are complained of.

(c) A full statement of the facts (avoiding a mere repetition of detailed

evidence) upon which the petition is based, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the regulation, order or administrative assessment, or the interpretation or applications thereof, which are complained of.

(d) A statement of the grounds on which the terms or provisions of the regulation, order, or administrative assessment or the interpretation or application thereof, which are complained of are challenged as not being in accordance with law.

(e) Any prayer for specific relief which the petitioner desires the Commission to grant;

(f) An affidavit by the petitioner, or if the petitioner, or if the petitioner is not an individual by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for the purposes of the delay. The affidavit may include a request for an oral hearing on the petition. Such request shall set forth specific grounds demonstrating the need for such a hearing.

(g) Any additional affidavit evidence supporting the petition.

(h) Petitioner's prayer for relief may include a request that payments due or payable during the pendency of the administrative appeal or longer pursuant to § 1381.5(b), be placed in an escrow account established by the Commission. If a request for escrow is made, petitioner may make payment into a Commission established escrow account while the Commission rules upon petitioner's request in accordance with § 1381.4(b)(5). Any petitioner who refuses to make payment during this period shall be liable for payment of interest on such withheld funds, at the federal statutory rate set forth in 28 U.S.C 1961, plus such additional penalties as are appropriate under Article VI, Section 17 of the Compact.

[62 FR 35065, June 30, 1997; 62 FR 36651, July 9, 1997]

§ 1381.4 Conduct of proceedings.

(a) *Appointment of hearing panel.* Upon receipt of a petition, and as determined appropriate by the Commission's Committee on Administration, the Chair shall appoint a hearing panel of either one to three Commission members, who are not members of the state delegation in which the Handler is incorporated or has its principal place of business, who have no pecuniary interest in the outcome, and who are otherwise fair and impartial, or an independent hearing officer. The hearing panel shall consider the petition. For hearing panels of Commission members greater than one member, the Chair shall designate a chief hearing officer.

(b) *Preliminary matters.* The panel shall meet within 15 days of their appointment to determine whether to:

(1) Limit the taking of evidence to affidavits, and thereby make their decision solely on the basis of the record before them without an oral hearing. In making this determination, the panel shall consider:

(i) The nature of the petition before them;

(ii) The nature of any facts in dispute that may necessitate an oral hearing; and

(iii) Whether the petitioner will be unduly prejudiced by limiting the taking of evidence to affidavits without benefit of an oral hearing.

(2) Require the production by affidavit or additional information, documents, reports, answers, records, accounts, papers or other data and documentary evidence necessary to the proper resolution of the matter.

(3) Compel the production of documentary evidence by subpoena throughout all signatory states pursuant to section 16(a) of the Compact.

(4) Consolidate two or more petitions pertaining to the same order or issue and the evidence relied upon under such consolidated proceeding may be embodied in a single decision.

(5) Grant or deny petitioner's request for the establishment of an escrow account, if such request has been made. The panel shall deny such a request only if it has otherwise ensured adequate protection to the handler with respect to the payments of sums due and challenged in the petition.

(c) The panel shall promptly notify petitioner by certified mail of the results of its deliberations under paragraphs (a) and (b) of this section. The

panel's notice shall include a concise statement of the basis for its decisions under those paragraphs. The notice shall include a time and place for an oral hearing, if any, and the deadline for the submission of any additional information required by the panel. The notice shall also set forth the date by which the panel will issue its proposed findings of fact, conclusions and decision, as computed under paragraph (g) of this section. If a request has been made for the establishment of an escrow account and such request has been granted, the notice shall also include a procedure for the making of escrow payments. If such request is denied, any payments made and held in escrow may be released for disbursement by the Commission.

(d) The panel may take official notice of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided,* That interested parties shall be given adequate notice of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(e) The panel shall:

(1) Exclude, insofar as practicable, evidence which is immaterial, irrelevant or unduly repetitious: *Provided,* That interested parties shall be given adequate notice of such exclusion and an opportunity to show that such evidence has been erroneously excluded.

(2) Not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding.

(f) *Oral hearing.* (1) Any oral hearing shall be conducted at a time and place determined by the panel.

(2) Testimony presented at the hearing shall be:

(i) Upon oath or affirmation administered by the panel and subject to reasonable cross examination; and

(ii) Reported verbatim.

(3) As part of the hearing, the panel may require the appearance of any witness, or the production of additional information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to the proper resolution of the matter.

(4) If appropriate, the panel shall compel the appearance of witnesses, the giving of testimony or the production of documentary evidence by subpoena throughout all signatory states pursuant to section 16(a) of the Compact.

(5) The panel shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(6) The panel shall rule on offers of proof and otherwise reasonably regulate the course of the hearing.

(g) *Proposed findings of fact, conclusions and decision.* (1) Within 45 days of the panel's appointment, or, in the event an oral hearing is held, within 60 days, the panel shall issue proposed findings of fact, conclusions and a decision based upon the evidence in the record. The proposed findings, conclusions and decision shall be served upon the petitioner by certified mail.

(2) Petitioner may submit a response to the panel's proposed findings of fact, conclusions and decision, along with supporting reasons. Such response shall be received by the Commission within 20 days of petitioner's receipt of the panel's proposed findings, conclusions and decision.

(3) The panel may modify, alter or amend its proposed findings, conclusions and decision in accordance with petitioner's response, as it deems appropriate.

(h) *Final ruling by the Commission.* (1) Unless the panel so notifies the Commission of the need for an extension of time, at its first regularly scheduled meeting following the deadline for the receipt of petitioner's response to the panel's proposed findings, conclusions and decision, the Commission shall make a final ruling upon the petition. The Commission's determination shall be based upon the panel's final or modified proposed findings, conclusions and decision. The Commission shall also consider the petitioner's response to the panel's original proposed findings, conclusion and decision. The record shall also be available for review by the Commission.

(2) The Commission's final ruling shall be served by certified mail upon

the petitioner and be filed in the Commission offices, and be made available for public inspection and copying in accordance with the bylaws.

(3) Any commissioner shall (on either the Commissioner's own motion or on motion of the petitioner) disqualify himself or herself from consideration of the Commission's final ruling on the panel's decision if that commissioner's impartiality might reasonably be questioned.

[62 FR 35065, June 30, 1997, as amended at 64 FR 11756, Mar. 10, 1999]

§ 1381.5 Judicial appeal; escrow.

(a) As set forth in section 16(c) of the Compact, as approved by 7 U.S.C. 7256, the district courts of the United States, in any district in which a handler is an inhabitant or has his principal place of business, have jurisdiction to review a final ruling of the Commission made pursuant to § 1381.4(h), provided that a complaint is filed within thirty days from the date of the entry of that final ruling.

(b) A petitioner who has been granted the establishment of an escrow account as part of the administrative proceeding and who has timely appealed may request that its payments be placed into escrow pending the appeal. Upon such a request, the Commission shall hold the money in escrow until the date that a timely judicial complaint is filed plus a period of ten days. The Commission may also, for good cause shown, continue to hold the money placed in escrow pending the ultimate resolution of any appeal, or for such other period as the Commission may establish.

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

EDITORIAL NOTE: Nomenclature changes for Chapter XIV appear at 60 FR 1710, Jan. 5, 1995, and at 60 FR 64297, Dec. 15, 1995.

SUBCHAPTER A—GENERAL REGULATIONS AND POLICIES

Part		*Page*
1400	Payment limitation and payment eligibility	?
1401	Commodity certificates, in kind payments, and other forms of payment	?
1402	Policy for certain commodities available for sale	?
1403	Debt settlement policies and procedures	?
1404	Assignment of payments	?
1405	Loans, purchases and other operations	?
1407	Debarment and suspension	?
1409	Meetings of the Board of Directors of Commodity Credit Corporation	?

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

1410	Conservation Reserve Program	?
1411	Oilseeds Program	?
1412	Production flexibility contracts for wheat, feed grains, and upland cotton	?
1421	Grains and similarly handled commodities	?
1423	Processed agricultural commodities	?
1424	Bioenergy program	?
1425	Cooperative marketing associations	?
1427	Cotton	?
1430	Dairy products	?
1434	Recourse loan regulations for honey	?
1435	Sugar program	?
1436	Farm Storage Facility Loan Program regulations	?
1437	Noninsured Crop Disaster Assistance Program regulations for the 1998 and succeeding crop years	451
1439	Emergency livestock assistance	463
1446	Peanuts	480

1447	2000 peanut marketing assistance program	?
1464	Tobacco	?
1466	Environmental Quality Incentives Program	?
1467	Wetlands Reserve Program	?
1468	Conservation Farm Option	?
1469	Wool and mohair price support programs	?
1477	1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program	?
1478	1999 crop disaster program	?
1479	Harney County flood assistance	?

SUBCHAPTER C—EXPORT PROGRAMS

1484	Programs to help develop foreign markets for agricultural commodities	?
1485	Cooperative agreements for the development of foreign markets for agricultural commodities	?
1487	[Reserved]	
1488	Financing of sales of agricultural commodities	?
1491–1492	[Reserved]	
1493	CCC Export Credit Guarantee Programs	?
1494	Export Bonus Programs	?
1495	[Reserved]	
1496	Procurement of processed agricultural commodities for donation under Title II, Pub. L. 480	?
1499	Foreign Donation Programs	?

CROSS REFERENCE: For regulations relative to standards, inspections, and marketing practices, see Chapter I of this title.

SUBCHAPTER A—GENERAL REGULATIONS AND POLICIES

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

Subpart A—General Provisions

Sec.
1400.1 Applicability.
1400.2 Administration.
1400.3 Definitions.
1400.4 Indian tribal ventures.
1400.5 Scheme or device.
1400.6 Commensurate contributions.
1400.7 Joint and several liability.
1400.8 Equitable adjustments.
1400.9 Appeals.
1400.10 Paperwork Reduction Act assigned number.

Subpart B—Person Determinations

1400.100 Timing for determining status of persons.
1400.101 Limited partnerships, limited liability partnerships, limited liability companies, corporations and other similar entities.
1400.102 Joint operations.
1400.103 Trusts.
1400.104 Estates.
1400.105 Husband and wife.
1400.106 Minor children.
1400.107 States, political subdivisions, and agencies thereof.
1400.108 Charitable organizations.
1400.109 Changes in farming operations.

Subpart C—Actively Engaged in Farming Determinations

1400.201 General provisions for determining whether an individual or entity is actively engaged in farming.
1400.202 Individuals.
1400.203 Joint operations.
1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations and other similar entities.
1400.205 Trusts.
1400.206 Estates.
1400.207 Landowners.
1400.208 Family members.
1400.209 Sharecroppers.
1400.210 Deceased and incapacitated individuals.
1400.211 Persons not considered to be actively engaged in farming.
1400.212 Hybrid seed producers.

Subpart D—Permitted Entities

1400.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

Subpart E—Cash Rent Tenants

1400.401 Eligibility.

Subpart F—Foreign Persons

1400.501 Eligibility.
1400.502 Notification.

AUTHORITY: 7 U.S.C. 1308, 1308–1, 1308–2; 16 U.S.C. 3834; Pub. L. 106–78, 113 Stat. 1135.

SOURCE: 61 FR 37566, July 18, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 1400.1 Applicability.

(a) All of the provisions of this part are applicable to the following programs and any other programs as may be provided for in individual program regulations:

(1) The programs authorized by part 1412 of this chapter;

(2) Any program authorized by parts 1421 and 1427 of this chapter under which a gain is realized by a producer from repaying a marketing assistance loan for a commodity at a lower rate than the original loan rate established for the commodity, and any program that authorizes the making of a loan deficiency payment with respect to a commodity;

(3)(i) The program authorized by parts 704 and 1410 of this title with respect to the Conservation Reserve Program (CRP) rental payments made in accordance with a contract entered into on or after August 1, 1988. For contracts entered into before August 1, 1988, in accordance with such contracts, the person may elect to have the provisions of this part apply to such contract by notifying the county committee in writing of such election. Such election shall be irrevocable.

(ii) The regulations set forth at part 795 of this title are applicable to CRP contracts entered into before December 22, 1987, and to CRP contracts entered into on or after such date and before August 1, 1988, if the person has not made the election specified in paragraph (a)(3)(i) of this section.

(iii) This part is not applicable to rental payments made in accordance with a CRP contract if such payments are made to a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program carried out by such State, political subdivision, or agency thereof that has been approved by the Secretary, or a designee of the Secretary.

(iv) With respect to inherited land, this part is not applicable to rental payments made in accordance with a CRP contract if such payments are made to an individual heir who has succeeded to such contract. Such land must have been subject to the CRP contract at the time it is inherited by the individual.

(b) Only the provisions of subparts A and B are applicable to the Agricultural Conservation Program (ACP) authorized under part 701 of this title.

(c) This part shall be applied to the programs specified in paragraph (a)(2) of this section on a crop year basis; and with respect to the programs specified in paragraphs (a)(1) and (3) and (b) of this section on a fiscal year basis.

(d) This part shall be used to determine whether individuals and entities are to be treated as one person or as separate persons for the purpose of applying the respective payment limitation provisions applicable to the programs specified in this section and to such other programs as may be provided in individual program regulations.

(e) In cases in which more than one provision of this part are applicable, the provision which is most restrictive shall apply.

(f) Payments shall not be subject to the payment limitation provisions if they are made to:

(1) Public schools with respect to land owned by a public school district; or

(2) A State with respect to land owned by a State that is used to maintain a public school.

(g) The following amounts are the limitations on payments per person per applicable period for each payment.

Payment type	Limitation per program year or fiscal year
Production Flexibility Contract	[1] $40,000
Production Flexibility Contract	[2] 50,000
Marketing Loan Gain	[3] 75,000
Loan deficiency	
CRP	50,000
ACP cost-share	3,500
Non-Insured Crop Disaster Assistance Program (NAP)	100,000
Environmental Quality Incentives Program (EQIP)	10,000

[1] Annual payment amount.

[2] Amounts made in accordance with section 113(c) of the Federal Agriculture Improvement and Reform Act of 1996.

[3] The total of marketing loan gains and loan deficiency payments cannot exceed $75,000 per crop year, except for the 1999 crop year for which the limit shall be $150,000 of which all or part may consist of marketing loan gains.

[61 FR 37566, July 18, 1996, as amended at 65 FR 7953, Feb. 16, 2000; 65 FR 36561, June 8, 2000]

§ 1400.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the FSA State and county committees (herein referred to as ''State and county committees,'' respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Benefits from programs subject to this part may not be issued until all required forms and necessary payment eligibility and payment limitation determinations are made.

(f) The initial ''actively engaged in farming'' and ''person'' determinations shall be made within 60 days after the producer files the required forms and any other supporting documentation needed in making such determinations. If the determination is not made within 60 days, the producer will receive a determination for that program year that reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan that was presented to the county or State committee for such year.

(g) Initial determinations concerning the provisions of this part shall not be made by a county FSA office with respect to any farm operating plan that is for a joint operation with more than five members.

(h) Reviews of farming operations and corresponding documentation submitted by program participants may be conducted to determine compliance with applicable statutes and regulations.

[61 FR 37566, July 18, 1996, as amended at 65 FR 36561, June 8, 2000]

§ 1400.3 Definitions.

(a) The terms defined in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall also be applicable to this part:

Active personal labor. Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops on conserving use and CRP acreages and those physical activities necessary in livestock operations.

Active personal management. Active personal management is personally providing:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Services (whether performed onsite or off-site) reasonably related and necessary to the farming operation, including:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops on conserving use and CRP acreage and activities required in livestock operations;

(ii) Business-related actions, which include discretionary decision making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;

(vii) Acquiring technical information used in the farming operation; and

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Alien. Any person not a citizen or national of the United States.

Lawful Alien. Any person who is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card (Form I–551 or I–151).

(2) [Reserved]

Capital. Capital consists of the funding provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital, in the form of funding, to the farming operation, such capital must have been derived from a fund or account separate and distinct from that

of any other individual or entity involved in such operation. Capital does not include the value of any labor or management that is contributed to the farming operation or any outlays for land or equipment. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the capital is contributed by a member of the joint operation or an entity, such capital contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation;

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity that has an interest in such farming operation; or

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest; and

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate; and

(2) With respect to a farming operation conducted by a joint operation in which the capital is contributed by such joint operation, such capital contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members;

(B) Such joint operation by any individual, entity, or other joint operation that has an interest in such farming operation; or

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations listed in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

Entity. An entity is a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Equipment. Equipment is the machinery and implements needed by the farming operation to conduct activities of the farming operation, including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conserving cover crops on conserving use and CRP acreages and those needed to conduct livestock operations.

(1) With respect to a farming operation conducted by an individual, entity or joint operation in which the equipment is contributed by a member of the joint operation, such equipment contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity that has an interest in such farming operation; or

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the equipment is contributed by such joint operation, such equipment contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation that has an interest in such farming operation; or

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest; and

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if listed as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such equipment may be leased from any source. If such equipment is leased from another individual or entity with an interest in the farming operation, such equipment must be leased at a fair market value.

Family member. The term family member means an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendant, or sibling, including spouses of those individuals who do not make a significant contribution to the farming operation themselves.

Farming operation. A farming operation is a business enterprise engaged in the production of agricultural products that is operated by an individual, entity, or joint operation and is eligible to receive payments, directly or indirectly, under one or more of the programs specified in §1400.1. An entity or individual may have more than one farming operation if such individual or entity is a member of one or more joint operations.

Interest in a Farming Operation. An individual, entity or joint operation has an interest in a farming operation if the individual, entity or joint operation:

(1) Owns or rents the land;

(2) Has an interest in the agricultural commodities produced; or

(3) Is a member of a joint operation that either owns or rents the land or has an interest in the agricultural commodities produced.

Irrevocable trust. All trusts shall be considered to be revocable trusts, except a trust may be considered to be an irrevocable trust if it is a trust:

(1) That may not be modified or terminated by the grantor;

(2) In the corpus of which the grantor does not have any future, contingent or remainder interest; and

(3) If established after January 1, 1987, that does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon either the remainder beneficiary achieving at least the age of majority or the death of the grantor or income beneficiary.

Joint operation. A joint operation is a general partnership, joint venture, or other similar business organization.

Land. Land is farmland that meets the specific requirements of the applicable program.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the land is contributed by a member of the joint operation, or an entity, such land contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the individual or entity and must not be acquired as a

result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation;

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity that has an interest in such farming operation; or

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest; and

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities listed in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate; and

(2) With respect to a farming operation conducted by a joint operation in which the land is contributed by such joint operation, such land contributed to meet the requirements of:

(i) Section 1400.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation that has an interest in such farming operation, including either joint operation's members;

(B) Such joint operation by any individual, entity, or other joint operation that has an interest in such farming operation; or

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest; and

(ii) Sections 1400.6 and 1400.201(d) must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, such land must be leased at a fair market value.

Payment. A payment includes:

(1) Payments made in accordance with part 1412 of this chapter;

(2) Loan gains and loan deficiency payments made in accordance with parts 1421 and 1427 of this chapter;

(3) CRP annual rental payments made in accordance with parts 704 of this title and 1410 of this chapter;

(4) ACP cost-share payments made in accordance with part 701 of this title;

(5) Non-Insured Crop Disaster Assistance Program (NAP) payments; and

(6) With respect to other programs, any payments designated in individual program regulations.

Payment, loan, or benefit. A payment, loan, or benefit made in accordance with the 1996 Act, the CCC Charter Act, or Subtitle D of the 1985 Act, which results in a direct expenditure by the CCC or any other agency of the Federal Government, including a payment made in accordance with part 1401 of this title. Such term does not include the establishment of contract acreages, farm program payment yields, acreage allotments, marketing quotas, and similar program provisions.

Permitted entity. A permitted entity is an entity designated annually by an individual that is to receive a payment, loan, or benefit under a program specified in § 1400.1(a).

Person. (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, revocable trust combined with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity, other than an individual or entity that is a member of a joint operation, to be considered a separate person for

the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity that is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers shall not be considered a person with respect to the commodities so marketed for producers.

Public school. A public school is a primary, elementary, secondary school, college, or university that is directly administered under the authority of a governmental body or that receives a predominant amount of its financing from public funds.

Sharecropper. An individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

Significant contribution. A significant contribution is the provision of the following to a farming operation by an individual or entity:

(1)(i) With respect to land, capital, or equipment contributed by an individual or entity, a contribution that has a value at least equal to 50 percent of the individual's or entity's commensurate share of:

(A) The total value of the capital necessary to conduct the farming operation;

(B) The total rental value of the land necessary to conduct the farming operation;

(C) The total rental value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by an individual or entity consists of any combination of land, capital, and equipment, such combined contribution must have a value at least equal to 30 percent of the individual's or entity's commensurate share of the total value of the farming operation;

(2) With respect to active personal labor, an amount which is the smaller of:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such individual's or entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities that are critical to the profitability of the farming operation, taking into consideration the individual's or entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution individually meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management that, when viewed together, results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as provided in paragraphs (2) and (3) of this definition.

Substantial amount of active personal labor. Substantial amount of active personal labor means the provision of active personal labor in an amount that is the smaller of:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such individual's or entity's commensurate share in the farming operation.

Substantial beneficial interest. A substantial beneficial interest in an entity is an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests in the entity that are owned by an individual or entity directly or indirectly through such means as ownership of a corporation that owns the entity shall be taken into consideration. In order to ensure that the provisions of this part are not circumvented by an individual

or entity, the Deputy Administrator may determine that an ownership interest requirement of less than 10 percent shall be applied to such individual or entity.

Total value of the farming operation. The total value of the farming operation is the total of the costs, excluding the value of active personal labor and active personal management contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

§ 1400.4 Indian tribal ventures.

An individual American Indian who receives payments through other than an Indian tribal venture is required to certify that they will not accrue total payments, including payments made to the Indian tribal venture and to the individual American Indian, in excess of the applicable payment limitation for programs specified in § 1400.1.

§ 1400.5 Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device designed to evade this part or that has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information that affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that a person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of sections 1001, 1001A, or 1001C of the 1985 Act such person shall be ineligible to receive payments under the programs specified in § 1400.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1400.6 Commensurate contributions.

In order to be considered eligible to receive payments under the programs specified in § 1400.1 an individual or entity specified in §§ 1400.202 through 1400.210 must have:

(a) A share of the profits or losses from the farming operation that is commensurate with the individual's or entity's contribution to the operation; and

(b) Contributions to the farming operation that are at risk.

§ 1400.7 Joint and several liability.

If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability that arises therefrom. The provisions of this section shall be applicable in addition to any liability that arises under a criminal or civil statute.

§ 1400.8 Equitable adjustments.

Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary to provide fair and equitable treatment to such individual or entity.

§ 1400.9 Appeals.

(a) Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title. With respect to such appeals, the applicable reviewing authority shall:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal; and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) shall not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional

time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved that affects the amount of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan initially presented to the county committee for the year that is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

§ 1400.10 Paperwork Reduction Act assigned number.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560–0096.

Subpart B—Person Determinations

§ 1400.100 Timing for determining status of persons.

(a) Except as otherwise set forth in this part, for the 1996 program or fiscal year, the status of an individual or entity on July 12, 1996, shall be the basis on which determinations are made in accordance with this part. Except as otherwise set forth in this part, for 1997 and subsequent years, the status of an individual or entity on April 1 of the applicable program or fiscal year, shall be the basis on which determinations are made in accordance with this part.

(b) Actions taken by an individual or entity after the applicable status date set forth in paragraph (a) of this section, but on or before the final harvest date of the last contract commodity in the area, as determined by the Deputy Administrator, shall not be used to determine whether there has been an increase in the number of persons for the applicable program or fiscal year. Actions taken by a person after the status date set forth in paragraph (a) of this section, but on or before the harvest of the last contract commodity in the area, shall be used to determine whether there has been a decrease in the number of persons for the applicable program or fiscal year.

§ 1400.101 Limited partnerships, limited liability partnerships, limited liability companies, corporations and other similar entities.

(a) A limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be considered to be a person separate from an individual partner, stockholder, or member except that a limited partnership, limited liability partnership, limited liability corporation, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, limited liability partnership, limited liability corporation, corporation, or other similar entity is owned by an individual (including the interest owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) or by an entity shall not be considered as a separate person from such individual or entity.

(b) If the same two or more individuals or entities own more than 50 percent of the interest in each of two or more limited partnerships, corporations, or other similar entities engaged in farming, all such limited partnerships, limited liability partnership, limited liability company, corporations, or other similar entities shall be considered to be one person.

(c) The percentage share of the interest in a limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity that is owned by an individual or other entity shall be determined as of the status date set forth in paragraph (a) of this section. If a partner, stockholder, or member acquires an interest in the limited partnership, corporation, or other similar entity after such date, and on or before the harvest of the last contract commodity in the

area as determined by the Deputy Administrator, the amount of any such interest shall be included in determining the total ownership interest of such partner, stockholder, or member.

(d) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.

§ 1400.102 Joint operations.

Members of joint operations may be separately treated as a person in accordance with the requirements of this part. However, members of a joint operation may request to be jointly treated as one person for the purposes of this part.

§ 1400.103 Trusts.

(a) A trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that a trust that has a sole income beneficiary shall not be considered to be a separate person from such income beneficiary.

(b) Where two or more irrevocable trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person.

(c) A revocable trust and the grantor of such revocable trust shall be considered to be one person.

§ 1400.104 Estates.

If the deceased individual had lived and would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir.

§ 1400.105 Husband and wife.

(a) With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who:

(1) Prior to their marriage were separately engaged in unrelated farming operations, will be determined to be separate persons with respect to such farming operations so long as such operations remain separate and distinct from any farming operation conducted by the other spouse; or

(2) Except as provided in paragraph (b), do not hold, directly or indirectly, a substantial beneficial interest in more than one entity (including themselves) engaged in farm operations that also receive payments as a separate person from either spouse, the spouses may be considered as separate persons if each spouse otherwise meets the requirements under this part to be considered a separate person and is otherwise eligible to receive payment.

(b) With respect to any interest in an estate, for 2 program years after the program year in which the individual died, a husband and wife shall not be considered as having an interest in an entity to the extent resulting from such interest in an estate for purposes of determining persons.

§ 1400.106 Minor children.

(a) Except as provided in paragraph (b) of this section, a minor, including a minor who is the beneficiary of a trust or who is an heir of an estate, and the parent or any court-appointed person such as a guardian or conservator who is responsible for the minor shall be considered to be one person.

(b) A minor may be considered to be a separate person from the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor, if the minor is a producer on a farm and the minor's parent or any court appointed person such as guardian or conservator who is responsible for the minor does not have any interest in the farm on which the minor is a producer or in any production from such farm. In addition the minor must:

(1) Have established and maintain a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; or

(2) Not live in the same household as such minor's parent and:

(i) Be represented by a court-appointed guardian or conservator who is responsible for the minor; and

(ii) Have ownership of the farm vested in the minor.

(c) A person shall be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.

§ 1400.107 States, political subdivisions, and agencies thereof.

A State, political subdivision and agencies thereof shall be considered to be one person.

§ 1400.108 Charitable organizations.

A charitable organization, including a club, society, fraternal or religious organization, shall be considered to be a separate person to the extent that such an entity is engaged in the production of crops as a separate person, except where the land or the proceeds from the farming operation may transfer to an entity that exercises control or authority over such organization.

§ 1400.109 Changes in farming operations.

Any change in a farming operation that would increase the number of persons to which the provisions of this part apply must be bona fide and substantive. If bona fide, the following shall be considered to be substantive changes in the farming operation:

(a) The addition of a family member to a farming operation in accordance with § 1400.208, except that such an addition will not affect the status of any other individual or entity that is added to the farming operation;

(b) With respect to a landowner only, a change from a cash rent to a share rent;

(c) An increase through the acquisition of cropland not previously involved in the farming operation of approximately 20 percent or more in the total cropland involved in the farming operation, if such cropland has planting history of an amount at least normal for the area;

(d) A change in ownership by sale or gift of a significant amount of equipment from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if the transferred amount of such equipment is commensurate with the new individual's or entity's share of the farming operation;

(e) A change in ownership by sale or gift of a significant amount of land from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of land will be considered to be substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of the farming operation.

Subpart C—Actively Engaged in Farming Determinations

§ 1400.201 General provisions for determining whether an individual or entity is actively engaged in farming.

(a) To be considered a person who is eligible to receive payments with respect to a particular farming operation, a person must be an individual or entity actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the individual or entity, independently makes a significant contribution to a farming operation, of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(c) In determining if the individual or entity is actively contributing a significant amount of active personal labor or active personal management the following factors shall be taken into consideration:

(1) The types of crops and livestock produced by the farming operation;

(2) The normal and customary farming practices of the area; and

(3) The total amount of labor and management necessary for such a farming operation in the area.

(d) In order to be considered to be actively engaged in farming an individual or entity specified in §§ 1400.202 through 1400.210 must have:

(1) A share of the profits or losses from the farming operation commensurate with the individual's or entity's contribution to the operation; and

(2) Contributions to the farming operation that are at risk.

§ 1400.202 Individuals.

An individual shall be considered to be actively engaged in farming with respect to a farming operation if the individual makes a significant contribution of:

(a) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

§ 1400.203 Joint operations.

(a) A member of a joint operation shall be considered to be actively engaged in farming with respect to a farming operation if the member makes a significant contribution of:

(1) Capital, equipment, or land or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management or a combination of active personal labor and active personal management.

(b) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1400.201(d), the members of the joint operation who make a significant contribution of active personal management, or a combination of active personal labor and active personal management to the farming operation shall be considered to be actively engaged in farming with respect to such farming operation.

§ 1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations and other similar entities.

A limited partnership, limited liability partnership, limited liability company, corporation, or other similar entity shall be considered to be actively engaged in farming with respect to a farming operation if:

(a) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) The partners, stockholders, or members collectively make a significant contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined beneficial interest of all the partners, stockholders, or members providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent.

§ 1400.205 Trusts.

A trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(a) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(b) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined interest of all the income beneficiaries providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent;

(c) The trust has provided a tax identification number of the trust unless the trust is a revocable trust and the grantor is the sole income beneficiary; and

(d) The trust has provided a copy of the trust agreement to the county committee unless the trust is a revocable trust.

§ 1400.206 Estates.

(a) For 2 program years after the program year in which an individual dies the individual's estate shall be considered to be actively engaged in farming if:

(1) The estate makes a significant contribution of either:

(i) Capital, equipment, or land; or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management; or

(ii) A combination of active personal labor and active personal management.

(b) After the period set forth in paragraph (a) of this section, the deceased individual's estate shall not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for the purpose of obtaining program payments.

§ 1400.207 Landowners.

A person who is a landowner, including landowners with an undivided interest in land, making a significant contribution of owned land to the farming operation, shall be considered to be actively engaged in farming with respect to such owned land, if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results. A landowner also includes a member of a joint operation if the joint operation holds title to land in the name of the joint operation and if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to such member of such joint operation.

§ 1400.208 Family members.

With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management, active personal labor, or a combination of active personal labor and active personal management shall be considered to be actively engaged in farming.

§ 1400.209 Sharecroppers.

A sharecropper who makes a significant contribution of active personal labor to the farming operation shall be considered to be actively engaged in farming.

§ 1400.210 Deceased and incapacitated individuals.

The determining authority shall take into consideration the circumstances involving individuals who have died or become incapacitated during the program year or fiscal year, as applicable. If the individual dies or is incapacitated before a determination is made that the individual is ''actively engaged in farming,'' the representative of the deceased individual's estate or the incapacitated individual, or other person if necessary, must provide the determining authority information to verify that such individual did make a conscious effort to and would have been determined to be actively engaged in farming if not for the individual's death or incapacitation. If the individual dies or is incapacitated after being determined to be ''actively engaged in farming,'' the determining authority shall allow such determination to be in effect for that program year or fiscal year, as applicable. However, the

following year such individual or the individual's estate must meet all necessary requirements in order to be determined to be ''actively engaged in farming'' for that year.

§ 1400.211 Persons not considered to be actively engaged in farming.

An individual or entity who does not satisfy all of the provisions of §§ 1400.202 through 1400.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity shall not be considered to be actively engaged in farming.

§ 1400.212 Hybrid seed producers.

The existence of a hybrid seed contract for a producer shall not be taken into account when making an actively engaged in farming determination with respect to such producer. However, such producer must satisfy all other applicable provisions of this part.

Subpart D—Permitted Entities

§ 1400.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

(a) An individual may receive a payment under a program specified in § 1400.1(a) either directly or indirectly from no more than three permitted entities. An individual who receives such a payment shall notify the county committee in the county in which such individual maintains a farming operation whether or not the farming operation is to be considered a permitted entity. An individual may only receive such payments as a result of a farming operation conducted by:

(1) The individual and by no more than two entities in which the individual holds a substantial beneficial interest; or

(2) No more than three entities in which the individual holds a substantial beneficial interest.

(b) Except for entities specified in paragraph (c) of this section, each entity entering into a contract or agreement under a program specified in § 1400.1(a) shall, by the date the contract or agreement is submitted to the county committee, notify in writing:

(1) Each individual or other entity that acquires or holds an interest in such entity of the requirements and limitations provided in this part; and

(2) The county committee of the name and social security number of each individual and the name and taxpayer identification number of each entity that holds or acquires a substantial beneficial interest in such entity.

(c) Entities shall not be subject to the provisions of paragraph (b) of this section if, as determined by the Deputy Administrator:

(1) Because of the number of members of such entity no member is likely to have a substantial beneficial interest in such entity; and

(2) Such provisions would cause undue financial hardship on such entity.

(d)(1) An individual or entity that holds a substantial beneficial interest in more than the number of permitted entities specified in paragraph (a) of this section for which a contract or agreement has been submitted to the county committee shall notify the county committee in writing, in each county in which they conduct a farming operation, of those entities that shall be considered as permitted entities by a date as determined by the Deputy Administrator following the date the contract or agreement was submitted to the county committee.

(2) The remaining entities in which the individual or entity holds a substantial beneficial interest shall be notified that such entity is subject to reductions in the payments earned by the remaining entity. Such a reduction shall be made in an amount that bears the same relationship to the full payment that the individual's interest in the entity bears to all interests in the entity. The remaining entity's members shall have the opportunity to adjust among themselves their proportionate shares of the program benefits in the designated entity or entities before such reductions are made.

(e) If an individual or entity fails to make such a notification as specified in paragraph (d) of this section, all entities in which the individual or entity holds a substantial beneficial interest

shall be subject to a reduction in payments in the manner specified in paragraph (d)(2).

Subpart E—Cash Rent Tenants

§ 1400.401 Eligibility.

(a) Any tenant that is actively engaged in farming in accordance with the provisions of subpart C and conducts a farming operation in which the tenant rents the land for cash, for a crop share guaranteed as to the amount of the commodity, or by any arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to such land under a program specified in § 1400.1(a) shall be ineligible to receive any payment with respect to such cash-rented land unless the tenant makes a significant contribution to the farming operation of:

(1) Active personal labor; or

(2) Active personal management and equipment. If such equipment is leased by the tenant from:

(i) The landlord, the lease must reflect the fair market value of the equipment leased; and

(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts that reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.

(b) [Reserved]

Subpart F— Foreign Persons

§ 1400.501 Eligibility.

(a) Any person who is not a citizen of the United States or a lawful alien shall be ineligible to receive payments, loans and benefits, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person unless such person is an individual who is providing land, capital, and a substantial amount of active personal labor on such farm.

(b)(1) A corporation or other entity shall be ineligible to receive payments, loan, and benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or lawful aliens unless each foreign individual who is a stockholder or other type of member provides a substantial amount of active personal labor in the production of crops on a farm owned or operated by such an entity. However, upon the written request of the entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the entity that is owned by citizens of the United States and lawful aliens or foreign stockholders or other type of member who provide a significant contribution of active personal labor in the production of crops on a farm owned or operated by such entity.

(2) In determining whether more than 10 percent of the beneficial ownership of an entity is held by persons who are not citizens of the United States or by lawful aliens, the beneficial ownership interest shall be the higher of the amount of such interest on:

(i) The date the applicable program contract or agreement is executed by the entity; or

(ii) Any other date prior to the final harvest date that is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other entity shall inform the county committee of any increase in such ownership that occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in such ownership after a payment, loan, or benefit has been made, the entity shall refund such payment, loan, or benefit.

(5) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation or other similar entity has more than one class of

stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.

(c) A citizen of the United States, lawful alien, or entity that is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by an individual or entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.

§ 1400.502 Notification.

(a) Any entity, whether foreign or domestic, that executes a program contract or agreement under which a payment, loan, or benefit may be available must provide written notification to the county committee in the county where the entity conducts its farming operation if:

(1) Any individual, group of individuals, entity, or group of entities holds more than a 10 percent beneficial interest in such entity; and

(2) Such individual, group of individuals, entity, or group of entities, in accordance with § 1400.501, are ineligible to receive a payment, loan and benefit.

(b) Such written notification must, if known, include the name and social security number or taxpayer identification number of such individual or entity and of all individuals and entities that hold a beneficial interest.

(c) The failure of the entity to provide this information will result in the ineligibility of the entity to receive any payment, loan, or benefit.

PART 1401—COMMODITY CERTIFICATES, IN KIND PAYMENTS, AND OTHER FORMS OF PAYMENT

Sec.

1401.1 Applicability.
1401.2 Payments in lieu of cash payments.
1401.3 Payments to persons with outstanding CCC loans.
1401.4 Commodity certificates.
1401.5 In kind payments.
1401.6 Assignments.
1401.7 Miscellaneous provisions.
1401.8 Subsequent holders.

AUTHORITY: 15 U.S.C. 714b and 714c; 7 U.S.C. 1445d.

SOURCE: 51 FR 36921, Oct. 16, 1986, unless otherwise noted. Redesignated at 53 FR 20290, June 3, 1988, and at 61 FR 37575, July 18, 1996.

§ 1401.1 Applicability.

This part shall be applicable to payments and loans made in accordance with the programs administered by the Commodity Credit Corporation (CCC) or the Farm Service Agency (FSA) as determined and announced by the Secretary of Agriculture or a designee of the Secretary. The definitions of the terms applicable to 7 CFR part 713 set forth at § 713.3 also shall be applicable to this part, except that the term ''commodity'' shall mean any agricultural commodity.

§ 1401.2 Payments in lieu of cash payments.

(a) CCC will, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or FSA, CCC may: at its option, make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

(1) By delivery of a commodity to a person at a warehouse or other similar facility;

(2) By transfer of negotiable warehouse receipts;

(3) By the issuance of certificates which CCC shall redeem in accordance with this part;

(4) By the acquisition and use of commodities pledged as collateral for CCC price support loans;

(5) By the use of commodities owned by CCC; and

(6) By such other methods as CCC determines appropriate, including methods to enable the producer to receive payments in order to assure that the producer receives the same total return as if the payments had been made in cash.

(c) The value of the payments made in any manner set forth in paragraph (b) shall be determined by CCC.

(d) Notwithstanding any other provision of this part, CCC may, with respect to producers who are members of a cooperative marketing association which has been determined in accordance with part 1425 of this title to be eligible to receive price support on behalf of its producer-members, enter into agreements with such producers and such cooperatives to facilitate the making of payments to such producers. Such agreements may include a provision which allows a producer to make available for the use of the cooperative the value of the non-cash payment which would otherwise be made to the producer.

§ 1401.3 Payments to persons with outstanding CCC loans.

(a) Persons with outstanding CCC loans who are eligible to receive payments from CCC, including a person authorized to receive a payment on behalf of another person, may be required to liquidate such loans in accordance with this section in order to be eligible to receive a payment authorized by § 1470.2.

(b) A person with an outstanding CCC loan must, unless otherwise agreed upon by the person and CCC, redeem and sell to CCC a quantity of the commodity pledged as collateral for a CCC loan, as determined by CCC, in an amount equal in value to the value of the payment which would otherwise be made to such person. If the person has more than one outstanding CCC loan, CCC may, by contract or otherwise, prescribe which loan collateral the person shall be required to redeem in order to receive payment. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advance storage payments received with respect to the redeemed collateral. After redemption and the subsequent sale to CCC of the commodity pledged as collateral for such CCC loan, CCC shall make available to the person a like quantity of the commodity.

§ 1401.4 Commodity certificates.

(a) *General.* CCC may issue commodity certificates as a form of payment. Commodity certificates will bear a dollar denomination. Such certificate may be transferred, exchanged for the inventory of CCC (including the receipt in accordance with paragraph (e) of this section of loan collateral by a person to whom a loan secured by such collateral is made): or exchanged for cash, as provided for in this section. Commodity certificates shall be subject to the provisions of this part, and to any terms, conditions and restrictions provided on the certificate, which are incorporated by reference herein.

(b) *Liens, encumbrances, and State law.* (1) The provisions of this section or the commodity certificates shall take precedence over any state statutory or regulatory provisions which are inconsistent with the provisions of this section or with the provisions of the commodity certificates.

(2) Commodity certificates shall not be subject to any lien, encumbrance, or other claim or security interest, except that of an agency of the United States Government arising specifically under Federal statute.

(3) The provisions of this paragraph (b) shall apply without regard to the identity of the holder of the certificate.

(c) *Transferability.* Any person may transfer a commodity certificate to any other person. However, any such transfer must be in the full amount of the certificate, and can be effected only by restrictive endorsement on the back of the certificate, showing the name of the transferee and the date of the transfer, and signed by the transferor. CCC will not honor any certificate bearing any endorsement to ''bearer'' or any other nonrestrictive endorsement, or otherwise transferred

in a manner contrary to the regulations contained in this section. The person who submits a commodity certificate to CCC shall endorse the certificate to CCC.

(d) *Exchange of commodity certificate for CCC-owned commodities*—(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may exchange such certificate, by itself or together with other commodity certificates, for such commodities as are made available by CCC by endorsing and submitting the certificate to CCC. If a person submits commodity certificates for exchange in order that the person would be eligible to receive a quantity of a commodity which includes less than an entire unit in which the commodity is stored (e.g., less than an entire bale of cotton or an entire barrel of honey): (i) Such person may forfeit the partial unit of the commodity to CCC, or (ii) CCC may issue a check to such person for the partial unit of the commodity or permit such person to purchase the remainder of such unit at a price determined by CCC. A person may obtain information regarding commodities available for exchange and the procedure for exchange from Kansas City Commodity Office, FSA–USDA, Kansas City, MO 64141–0205.

(2) *Minimum quantities.* A holder of an amount of commodity certificates sufficient to acquire a carload lot, or other quantity as may be determined by CCC, may present such amount for exchange at any time on or before the expiration date of such certificates. A holder who is permitted to exchange the certificate for CCC-owned commodities but who does not possess commodity certificates in the amount specified in the preceding sentence may, not to exceed once during a calendar month, submit such certificates to CCC. CCC will, at CCC's option, pay such holder by check in the amount of the certificate or transfer to such holder title to commodities owned by CCC.

(3) *CCC-owned commodities stored by a person who submits commodity certificates to CCC.* CCC may require or permit holders of commodity certificates to exchange such certificates for commodities owned by CCC which are stored by such holder, without making such commodities or kinds of commodities available to other holders of commodity certificates.

(4) *Valuation.* Except as otherwise may be announced by CCC, CCC will determine the value of CCC-owned commodities made available to holders of commodity certificates.

(5) *Transfer of title.* Title to commodities owned by CCC which are transferred to a person who submits commodity certificates to CCC shall be transferred in store, except as may be determined and announced by CCC. The person who submits certificates to CCC shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC. The transfer of title to such commodities shall occur without regard to any State law or any claim of lien against the commodity or proceeds thereof which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute.

(6) *Expiration date.* CCC may, at its option, discount or refuse to accept any commodity certificate presented for exchange after the expiration date stated on the certificate.

(e) *Use of commodity certificates to receive loan collateral*—(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may use such certificate to receive commodities pledged as collateral for CCC loans made to such person, at any time on or before the expiration date stated on the certificate. A holder of a commodity certificate who wishes to receive a quantity of a commodity pledged by such person as collateral for a CCC loan in exchange for a certificate shall redeem and sell to CCC a quantity of the commodity equal in value to the dollar denomination of the certificate, as determined by CCC. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the

amount of any unearned advanced storage payments received with respect to the redeemed loan collateral. Upon submission of the certificate, which is endorsed to CCC, to the county FSA office which issued the loan, the holder of a commodity certificate will receive the quantity of the commodity which has been sold to CCC. Except as otherwise determined by CCC, if the holder of such certificate does not have commodities pledged as collateral for CCC loans equal in value to the dollar denomination of the certificate, as determined by CCC, CCC will, at CCC's option and after the producer has submitted the certificate, pay the difference to the person by check or in the form of a new commodity certificate.

(2) *Ineligible commodities*. No person may use a commodity certificate to receive a quantity of tobacco, peanuts, or extra long staple cotton pledged as collateral for a CCC loan. No person may, before August 1, 1986, use a commodity certificate to receive a quantity of upland cotton pledged as collateral for a CCC loan.

(f) *Cash redemption start date*. (1) The person to whom a generic certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, at the issuing county FSA office for payment by check in the amount of the certificate on or after the date entered in block D through the expiration date of the certificate. Such person may not exchange the certificate for commodities owned by CCC, except as otherwise agreed upon between such person and CCC.

(2) The person to whom a generic certificate is issued which has an entry of ''S/H'' in block D may exchange such certificate for commodities owned by CCC.

(3) The person to whom a commodity specific certificate is issued which has a date entered in block D may submit such certificate, endorsed to CCC, to the Kansas City Commodity Office for the specific commodity entered in block C beginning on the date entered in block D through the expiration date of the certificate. Such certificate may not be exchanged for cash, except as otherwise agreed on by CCC.

(4) All other certificates may be transferred and exchanged as determined and announced by CCC.

(g) *''Generic'' and commodity-specific commodity certificates*—(1) *General*. If a commodity certificate indicates that it is a ''generic'' certificate, such certificate may, subject to the provisions of paragraphs (a) through (f) of this section, be exchanged for any commodity made available by CCC or, as appropriate, used to receive a quantity of any commodity which serves as collateral for a CCC loan. If a certificate is not a ''generic certificate'', such certificate may be exchanged for the commodity specified on the certificate, except as may be determined and announced by CCC.

(2) *Cotton program payments*. Certificates issued as payments under the 1991 through 1995 upland cotton program, including payments issued in accordance with section 103B(a)(5)(B) of the Agricultural Act of 1949, may be exchanged for CCC-owned upland cotton only during such times as determined and announced by CCC.

(3) *Commodities not available in CCC inventory*. Notwithstanding any other provision of this section, if a person submits a commodity specific certificate to CCC in exchange for a quantity of such commodity and CCC determines it is not possible to make such commodity available, CCC may: (i) Require such person to exchange the commodity specific certificate for a generic certificate; or (ii) refuse to accept submission of such certificate until CCC is able to make available a quantity of the commodity specified on such certificate.

(h) CCC, at its option, may discount or refuse to accept any certificate made, transferred, or submitted in violation of this section.

(i) *Interest*. With respect to producers who receive commodity certificates in accordance with the wheat, feed grains, upland cotton and rice price support and production adjustment programs authorized by parts 1413 and 1421 of this title, a producer to whom the certificate is issued who exchanges such a certificate with CCC for cash in accordance with subsection (f) of this section shall receive interest with respect to such certificate for a 150 day period.

Such interest shall be the rate of interest determined in accordance with part 1405 of this Title which is in effect on the date the certificate is issued.

[51 FR 36921, Oct. 16, 1986, as amended at 51 FR 43580, Dec. 3, 1986; 52 FR 45607, Dec. 1, 1987; 56 FR 361, Jan. 4, 1991]

§ 1401.5 In kind payments.

(a) Subject to the provisions of §§ 1470.2 and 1470.3, CCC may make payments in the form of commodities. Quantities of commodities made available as payment shall be based upon the value of the commodity, as determined by CCC. Such quantity may be adjusted by CCC to reflect the location, quality, and other similar factors which CCC determines to affect the value of the commodity.

(b) The transfer of title to commodities made available in accordance with paragraph (a) of this section shall be in store, except as determined by CCC, and shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute. The recipient of such commodities shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC.

§ 1401.6 Assignments.

Notwithstanding any other provision of this chapter, a payment made under this part may not be the subject of an assignment, except as determined and announced by CCC.

§ 1401.7 Miscellaneous provisions.

Except as determined by CCC, the following provisions of this title shall apply to this part:

(a) Part 13, Setoffs and Withholding.

(b) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.

(c) Part 718, Determination of Acreage and Compliance.

(d) Part 780, Appeal Regulations.

(e) Part 790, Incomplete Performance Based Upon Actions or Advice of an Authorized Representative of the Secretary.

(f) Part 791, Authority to Make Payments When There has been a Failure to Comply Fully with the Program.

(g) Part 795, Payment Limitation.

(h) Part 796, Denial of Program Eligibility for Controlled Substance Violations.

(i) Part 1403, Interest on Delinquent Debts.

(j) All other parts of the Code of Federal Regulations which are made applicable to this part.

§ 1401.8 Subsequent holders.

(a) *General.* A person who acquires a commodity certificate from another person shall be considered to be a ''subsequent holder'' of the certificate. Subsequent holders of certificates who purchased a commodity certificate on or before January 1, 1990 may, after the expiration date specified on the certificate, submit the certificate to CCC for a payment from CCC determined in accordance with paragraph (b) of this section. All certificates must be submitted after January 2, 1991 and on or before May 28, 1991. Certificates submitted after May 28, 1991 shall not be accepted for payment. Certificates shall be considered to be submitted as of the date of the postmark on the envelope containing the certificate. All certificates submitted for payment must be submitted with, and in accordance with, Form CCC–8. All certificates submitted to CCC for payment shall be retained by CCC.

(b) *Payment rates.* (1) Certificates with an expiration date of April 30, 1989 or earlier shall not, in any instance, be eligible for payment by CCC. Certificates which are submitted 18 months after the expiration date specified on the certificate shall not be accepted for payment by CCC.

(2) Persons who submit to CCC, in accordance with this section, certificates with an expiration date of May 31, 1989 or later shall receive a payment equal to 50 percent of the certificate's face value if such certificate is submitted within the period which:

(i) Begins 6 months and one day after the expiration date specified on the certificate and

(ii) Ends 18 months after such expiration date.

(3) Persons who submit to CCC in accordance with this section certificates with an expiration date of May 31, 1989 or later shall receive a payment equal to 85 percent of the certificate's face value if such certificate is submitted within the period which:

(i) Begins the day after the expiration date specified on the certificate and

(ii) Ends 6 months after such expiration date.

(c) *Transitional rules*. In order to provide full benefits under this section to parties whose certificates may decline in value from the date of enactment of section 1122 of the Food, Agriculture, Conservation, and Trade Act of 1990 (November 28, 1990) until the implementation of the provisions of such section, persons who, by January 31, 1991, submit to CCC in accordance with this section certificates with expiration dates of May 31, 1989, June 30, 1989, May 31, 1990, and June 30, 1990, shall receive payments for such certificates as if they had been submitted on November 30, 1990.

(d) *Payment limit*. (1) No person, as defined in § 719.2(r) of this title, shall receive a payment in excess of $1,000, except that any wholly-owned or wholly controlled entity, such as a corporation, shall be considered to be the same person as the person which owns or controls such entity. Any person who adopts or participates in adopting a scheme or device which is designed to evade this limitation or which has the effect of evading this limitation shall be ineligible to receive a payment under this section. Such acts include, but are not limited to:

(i) Concealing information which affects the application of this section;

(ii) Submitting false or erroneous information;

(iii) Creating fictitious entities for the purpose of evading the application of this section.

(2) No payment shall be paid to a person which is in excess of the amount which the person paid for the certificate.

(e) *Application*. In order to receive a payment under this section, a person must:

(1) Submit certificates with an expiration date of May 31, 1989, or later with a completed Form CCC–8 to CCC postmarked by May 28, 1991;

(2) Submit no earlier than January 2, 1991 all certificates and Forms CCC–8 to CCC by mail at the following address: CCC Expired Certificate Exchange, Attn: Claims and Collections Division, P.O. Box 419205, Kansas City, Missouri, 64141–6205;

(3) Submit evidence to CCC which establishes to the satisfaction of CCC:

(i) The date the subsequent holder purchased the certificates;

(ii) The price paid by the subsequent holder for the certificates; and

(iii) If requested by CCC, the name and address of the person from whom the subsequent holder purchased the certificates.

[56 FR 362, Jan. 4, 1991]

PART 1402—POLICY FOR CERTAIN COMMODITIES AVAILABLE FOR SALE

Sec.

1402.1 General.
1402.2 Submission of offers, terms, and conditions.
1402.3 Information.
1402.4 Other sales.

AUTHORITY: 7 U.S.C. 7285; 15 U.S.C. 714b and 714c.

SOURCE: 61 FR 37575, July 18, 1996, unless otherwise noted.

§ 1402.1 General.

To facilitate trade in private trade channels, the Commodity Credit Corporation (CCC) will disseminate general sales offering information in the CCC Sales List which is published in press release form. The CCC Sales List will be revised and republished as necessary. CCC reserves the right to make any amendments deleting or adding to the provisions of the CCC Sales List or changing prices or methods of sale, including but not limited to, changes in the minimum prices and carrying charges. These lists are issued for the purpose of public information and do not constitute an offer to sell by CCC or an invitation for offers to purchase from CCC. The CCC Sales List will set forth either the prices or the pricing basis at which commodity holdings of

CCC are available for sale for unrestricted or restricted use, and for export. Information concerning barter and credit will also be included. To be placed on the mailing list for the CCC Sales List press release, requests should be made to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW, Washington, DC 20250–9860.

§ 1402.2 Submission of offers, terms, and conditions.

CCC will entertain offers from prospective buyers for the purchase of any commodities on the CCC Sales List. Offers accepted by CCC will be subject to terms and conditions prescribed by CCC. These terms include, among others, payment by cash or irrevocable letter of credit before delivery of the commodity, removal of the commodity from CCC storage within a reasonable period of time, and, in sales for export, proof of exportation.

§ 1402.3 Information.

The terms and conditions of sale with respect to any commodity appearing on the CCC Sales List will be furnished upon request addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW, Washington, DC 20250–9860.

§ 1402.4 Other sales.

The general policy of CCC of making sales on a competitive or negotiated basis will continue to apply to all sales not covered by this announcement. Inquiries with respect to such sales may be addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW, Washington, DC 20250–9860.

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

Sec.

1403.1 Applicability.
1403.2 Administration.
1403.3 Definitions.
1403.4 Demand for payment of debts.
1403.5 Collection by payment in full.
1403.6 Collection by installment payments.
1403.7 Collection by administrative offset.
1403.8 Withholding.
1403.9 Late payment interest and administrative charges.
1403.10 Waiver of late payment interest and administrative charges.
1403.11 Administrative appeal.
1403.12 Additional administrative collection action.
1403.13 Contact with debtor's employing agency.
1403.14 Prior provision of rights with respect to debt.
1403.15 Discharge of debts.
1403.16 Referral of delinquent debts to credit reporting agencies.
1403.17 Referral of debts to Department of Justice.
1403.18 Referral of delinquent debts to IRS for tax refund offset.
1403.19 Reporting of discharged debts to IRS.
1403.20 Referral of debts to private collection agencies.
1403.21 Collection of 1988 and 1989 advance deficiency overpayments.

AUTHORITY: 15 U.S.C. 714b and 714c; 7 U.S.C. 1445b–2(b).

SOURCE: 54 FR 52878, Dec. 22, 1989, unless otherwise noted.

§ 1403.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Commodity Credit Corporation (CCC) will settle and collect debts by and against CCC.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991]

§ 1403.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC and the Administrator, Farm Service Agency (FSA).

§ 1403.3 Definitions.

The following definitions shall be applicable to this part:

Administrative charges means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

Administrative offset means deducting money payable or held by the United States Government, or any agency

thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

FSA means the Farm Service Agency of the United States Department of Agriculture (USDA).

Carrier means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or piggyback enterprises, which provide transportation or other transportation-related services for compensation.

Certified financial statement means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the preparer, under penalty of perjury.

CCC means the Commodity Credit Corporation.

Claim means an amount of money or property which has been determined by CCC, after a notice of delinquency and a demand for the payment of the debt has been made by CCC, to be owed to CCC by any person other than a Federal agency.

Credit reporting agency means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with USDA concerning the referral of credit information.

Debt means any amount owed to CCC or owed by CCC which has not been satisfied through payment or otherwise.

Debt record refers to the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to CCC, FSA, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an FSA office.

Delinquent debt means:

(1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or

(2) any debt that has not been paid by the date of an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

Discharged debt means any debt, or part thereof, which CCC has determined is uncollectible.

IRS means the Internal Revenue Service.

Late payment interest rate means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be equal to the rate of interest assessed under the Prompt Payment Act.

Person means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

Salary offset means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

Settlement means any final disposition of a debt or claim.

Shipment means a carload, truckload, containerload, or other conveyance load of freight shipped from one location by one shipper for delivery. Such shipment must move in accordance with the terms of a commercial or ocean bill or lading, or other similar agreement between the carrier and CCC. In the case of export shipments, the agreement may also be between the carrier and a private voluntary organization, foreign government, or the Agency for International Development.

System of records means a group of any records under the control of CCC or FSA from which information is retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

Withholding means the taking of action to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991]

§ 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the

initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due CCC, including the principal, applicable interest, costs and other charges;

(2) CCC's intent to establish an account on a debt record 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in § 1403.9.

(4) CCC's intent, if applicable, to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or FSA payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) If not previously provided, the debtor's right to request administrative review by an authorized CCC official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter, unless a different time period is specified in the contract, agreement or program regulation;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter.

(6) The debtor's right to a full explanation of the debt and to dispute any information in the records of CCC concerning the debt;

(7) That CCC maintains the right to initiate legal action to collect the amount of the debt;

(8) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to CCC has not been arranged 90 days after the due date, an additional interest rate shall be assessed on the unpaid balance of the debt as prescribed in § 1403.9(e);

(9) CCC's intent, if applicable, under § 1403.16, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(10) CCC's intent, if applicable, under § 1403.18, to refer any delinquent debt to the IRS, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(b) When CCC deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991]

§ 1403.5 Collection by payment in full.

Except as CCC may provide in accordance with § 1403.6, CCC shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by another method, including voluntary payment. If a debt is paid in one lump sum after the due date, CCC will impose late payment interest, as provided in § 1403.9, unless such interest is waived as provided in § 1403.10.

§ 1403.6 Collection by installment payments.

(a) Payments in installments may be arranged, at CCC's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by CCC, no installment arrangement will be considered unless the debtor submits a certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. The financial statement shall not be required to be submitted sooner than 15 business days following its request by CCC.

(c) All installment payment agreements shall be in writing and may require the payment of interest at the late payment interest rate in effect on the date such agreement is executed. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults. A confession of judgment provision may be included in the agreement.

(d) CCC may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides CCC a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to CCC, CCC may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary installment or partial payment, the payment will be applied to such debts as determined by CCC.

§ 1403.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due CCC except as otherwise provided in this part and part 1404 of this Chapter. This section is not applicable to:

(1) CCC requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and CCC requests for salary offset against a present or former employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) CCC requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 1403.18;

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC;

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute; and

(5) IRS Notices of Levy which shall be honored in accordance with IRS statutes and regulations.

(b) Debts due CCC may be collected by administrative offset from amounts payable by CCC when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with part 780 of this Title or any other applicable appeal procedures, if not previously provided;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of CCC related to the debt;

(3) The debtor has been notified in writing that the debt may be collected by administrative offset if not paid; and

(4) The debt has not been delinquent for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later.

(c) Administrative offset shall also be effected against amounts payable by CCC:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of CCC.

(d) Debts due CCC from carriers for overcharges shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(2) The period of limitation prescribed at 49 U.S.C. 11706(f) has not expired.

(e) Debts due CCC from carriers for loss or damage shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) Timely demand for payment was made on the carrier;

(2) The carrier has declined payment of the debt without reasonable justification or has ignored the claim; and

(3) The period of limitation prescribed at 49 U.S.C. 11707(e) has not expired.

(f) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be offset against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(g) A payment due any person may be offset when there is a breach of a contract or a violation of CCC program requirements, and offset is considered necessary by CCC to protect the financial interests of the Government.

(h) In the case of any procurement contract with CCC which provides for invoicing at the time of shipment with delivery to be made at designated destination points when:

(1) Payment is made to the contractor prior to receipt of evidence of delivery, and

(2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained from shortage, damage to or deterioration of the commodity while in transit and prior to delivery, CCC may offset such indebtedness against amounts due and payable to the Contractor under any other contract with CCC providing the Contractor has not assigned the proceeds of such contract in accordance with part 1404 of this chapter.

(i) CCC may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by (b)(1–3) of this section if:

(1) Failure to take the offset would substantially prejudice CCC's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(j)(1) Debts due any agency other than CCC shall be offset against amounts payable by CCC to a debtor when an agency of the U.S. Government has submitted a written request for offset which is mailed or hand-delivered to the appropriate FSA State office, Kansas City Management Office or Kansas City Commodity Office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the social security number or employer ID number of the debtor and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to

such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate FSA office.

(k)(1) After CCC has complied with the provisions of this part, CCC may request other agencies of the Government to offset amounts payable by them to persons indebted to CCC.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 1403.18 shall apply.

(l)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to CCC.

(ii) Debts to other agencies of USDA as determined by CCC.

(iii) Debts to other government agencies as determined by CCC.

(2) In the case of multiple debts involving the same debtor, CCC may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by CCC based on the facts and circumstances of the particular case.

(m)(1) No amounts payable to a debtor by CCC shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this subsection.

(2) A payment which is assigned in accordance with part 1404 of this Chapter by execution of Form CCC–36 shall be subject to offset for any debt owed to CCC or FSA without regard to the date notice of assignment was accepted by CCC or FSA.

(3) A payment which is assigned in accordance with part 1404 of this Chapter by execution of Form CCC–252 shall be offset:

(i) Against any debt of the assignor entered on the debt record of the applicable FSA office prior to the filing of such form with CCC or FSA, or

(ii) At anytime, regardless of the date of filing of such form with CCC or FSA, if the debt which is the basis for the offset arises under the same contract under which the payment is earned by the assignor.

(4) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which are entered on the debt record of the appropriate FSA office prior to the date the notice of assignment was accepted by CCC or FSA.

(5) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

(n) Amounts recovered by offset for CCC and FSA debts but later found not to be owed to the Government shall be promptly refunded.

(o) The debtor shall be notified whenever any offset action has been taken.

(p) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(q) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly, as determined by CCC.

(2) When CCC determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the claim or debt.

(r) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(s) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in § 1403.15.

(3) The amount payable to the debtor is used to satisfy a prior lien on property pledged as collateral for a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for offset.

(4) CCC determines such action will unduly interfere with the administration of a CCC or FSA program.

(5) The debt has been delinquent for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later.

(t)(1) Notwithstanding the provisions of paragraph (b) of this section and § 1403.4, with respect to debts which are based upon an unsettled CCC loan, offset action may be taken when the debtor has been:

(i) Provided written notification of the maturity date of the loan and the debtor has not repaid the loan by the maturity date or, in the case of a nonrecourse price support loan, has not repaid the loan or forfeited the loan collateral to CCC by the date specified by CCC;

(ii) Notified of CCC's intent to establish an account on a debt record 30 days after the maturity date, or other applicable period of time, if the loan is not settled in accordance with the loan agreement;

(iii) Notified of the right to pursue an administrative appeal in accordance with part 780 of this title if such an opportunity has not been previously provided;

(iv) Provided an opportunity to inspect and copy CCC records related to the debt; and

(v) Notified in writing that the debt may be collected by administrative offset if the loan is not repaid or, with respect to nonrecourse loans only, settled through forfeiture of the loan collateral.

(2) After a claim has been established by CCC with respect to a loan which has not been settled by the date specified in the loan agreement:

(i) In the event CCC takes possession of the collateral which is security for a nonrecourse of recourse loan made in accordance with parts 1421, 1427, 1434, or 1435 of this chapter, the value of such loan collateral shall be determined by CCC in accordance with the provisions of such parts which are used to determine the settlement value of the collateral. The value of such collateral shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

(ii) In the event CCC takes possession of the collateral which is the security for any other loan, the value of such collateral, as determined by CCC, less any costs incurred by CCC in taking possession and disposing of the collateral, shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991; 60 FR 43706, Aug. 23, 1995]

§ 1403.8 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States only if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of CCC has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due CCC or FSA, withholding action by CCC on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

[54 FR 52878, Dec. 22, 1989]

§ 1403.9 Late payment interest and administrative charges.

(a)(1) The provisions of this section are applicable to all persons whose debt to CCC becomes delinquent after January 1, 1990, unless the debtor and CCC agree otherwise.

(2) Late payment interest provisions of this section shall not apply:

(i) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged in accordance with applicable statutes or, if none are applicable, at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent;

(ii) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(iii) If the late payment interest is waived by CCC.

(b) CCC will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term ''full amount of the delinquent debt'' means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to CCC on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be equal to the higher of the Treasury Department's current value of funds rate or the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor, except that, with respect to debts resulting from price support loans, late payment interest shall begin to accrue from the date on which a claim is established.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. CCC may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e)(1) Except as specified in paragraphs (a)(2) and (e)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid 90 days after the date described in paragraph (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date late payment interest began to accrue and apply on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(2) With respect to debts resulting from price support loans, an additional interest rate of three (3) percent per annum will be assessed on a portion of a debt which remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed retroactively from the date of claim establishment and apply on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) CCC shall assess as administrative charges the additional costs of processing delinquent debts against the

debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to administrative charges, second to additional interest assessed in accordance with paragraph (e) of this section and late payment interest, and third to outstanding principal.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66955, Dec. 27, 1991; 60 FR 43706, Aug. 23, 1995]

§ 1403.10 Waiver of late payment interest, additional interest and administrative charges.

(a) Except for debts resulting from price support loans, CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) CCC may waive the assessment and collection of all or a portion of the additional interest on debts which are appealed in accordance with 7 CFR part 780, or other applicable appeal procedures, from either the date of the appeal or the date of delinquency, as determined by CCC, until the date a final administrative determination is issued. However, with respect to CCC programs administered by the Foreign Agricultural Service, CCC shall waive the assessment and collection of additional interest on debts which are appealed in accordance with 7 CFR part 780, or other applicable appeal procedures, from the date of delinquency until 30 days after the date of the letter informing the appellant of the final administrative determination. The waiver provisions of the paragraph shall not apply during any period of delay due to:

(1) The appellant's request for a postponement of the scheduled hearing;

(2) The appellant's request for an additional time following the hearing to present additional information or a written closing statement; or

(3) The appellant's failure to timely present information to the reviewing authority.

(c) Assessment and collection of late payment interest, additional interest and administrative charges under this part may be waived by CCC in full, or in part, if it is determined that such action is in the best interest of CCC.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66956, Dec. 27, 1991]

§ 1403.11 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under part 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title, or other applicable appeal procedures, of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter, unless a longer period is specified in the initial demand letter.

[56 FR 66956, Dec. 27, 1991]

§ 1403.12 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative or contractual remedy which may be available to CCC to collect debts owed to the Government.

[56 FR 66956, Dec. 27, 1991]

§ 1403.13 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, CCC may contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469.

§ 1403.14 Prior provision of rights with respect to debt.

CCC will not provide an administrative appeal with respect to issues

which were subject to administrative review at the debtor's request as provided under another statute or regulation before:

(a) Effecting administrative offset;

(b) Referring the debt to private collection or credit reporting agencies;

(c) Referring the debt to the Office of Personnel Management (OPM) for salary offset against the current pay of a present or former Government employee; or

(d) Referring the debt to IRS for tax refund offset.

§ 1403.15 Discharge of debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed CCC shall be discharged and the records and accounts on that debt closed in the following situations:

(1) When an obligation or part thereof is discharged in bankruptcy;

(2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to CCC;

(3) When a debt or part thereof is compromised and paid, the amount of such compromise;

(4) When collection of a debt by administrative offset is barred in accordance with § 1403.7(s)(5).

(b) A debt or part thereof owed CCC may be discharged and the records and accounts on that debt closed when the Controller, CCC, has determined that such action is in the best interest of CCC.

(c) A claims official or claims officer may discharge a delinquent debt if such debt arises under the terms of the authority delegated to such official or officer in the following circumstances:

(1) The delinquent debt is owed by an entity which has been liquidated or dissolved and no legal remedy is feasible.

(2) The delinquent debt is owed by an individual who:

(i) Is declared legally insane or incompetent;

(ii) Possessed of no assets or other means of payment; and

(iii) Possessed of no reasonable prospects of being able to pay the debt in the future.

(3) The delinquent debt was incurred by an individual who is deceased, and from whose estate recovery cannot be made.

(d) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 1403.19.

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to farm producers when CCC reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, CCC shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to § 1403.4, of CCC's intent to make such a report. Such notification shall include:

(1) CCC's intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of CCC, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when CCC has reported any delinquent debt to a credit reporting agency.

(e)(1) CCC shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim.

(2) CCC shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor

shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from the system of records maintained by CCC.

(g) CCC shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom CCC does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the debt in accordance with § 1403.11. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under § 1403.11.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) CCC shall not report delinquent debt information to credit reporting agencies when:

(i) The debtor has entered a repayment agreement covering the debt with CCC, and such agreement is still valid; or

(ii) CCC has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2) of this section.

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

(l) Notwithstanding the provisions of paragraphs (a) through (k) of this section, all commercial debts owed by debtors other than farm producers may be reported to credit reporting agencies.

[54 FR 52878, Dec. 22, 1989, as amended at 56 FR 66956, Dec. 27, 1991]

§ 1403.17 Referral of debts to Department of Justice.

Debts which cannot be collected in accordance with these regulations may be referred to the Department of Justice for collection action.

§ 1403.18 Referral of delinquent debts to IRS or tax refund offset.

CCC may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 1403.19 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, CCC may report to IRS as discharged debts on IRS Form 1099–G only the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between CCC and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

(3) The amount of a debt discharged by CCC in accordance with § 1403.15(b).

§ 1403.20 Referral of debts to private collection agencies.

If CCC's collection efforts have been unsuccessful after 90 days and the delinquent debt remains unpaid, CCC may refer the debt to a private collection agency for collection.

§ 1403.21 Collection of 1988 and 1989 advance deficiency overpayments.

(a) The provisions of this section set forth the policies and procedures for collection of 1988 and 1989 advance deficiency overpayments (''overpayments'').

(b) The following definition shall be applicable to this section:

Financial hardship means that condition of a producer in which payment of the debt by lump sum would jeopardize the producer's ability to provide food, shelter, and medical care to his immediate family, or to continue the producer's farming operation, as determined by CCC.

(c) This section applies to collection of overpayments from those producers who are suffering financial hardship, as determined by CCC, and who also meet the following conditions, as determined by CCC:

(1) Who received an advance deficiency payment for the 1988 or 1989 crop of a commodity under part 1413 of this chapter;

(2) Who are required to provide a refund of at least $1,500 of such payment, as a result of the increase in market prices of the commodity;

(3) Who reside in a county, or in a county that is contiguous to a county where CCC has determined that farming, ranching, or aquaculture operations have been substantially affected as evidenced by a reduction in normal production for the county of at least 30 percent during two of the three crop years 1988, 1989, and 1990 by:

(i) A natural disaster designated by the Secretary of Agriculture;

(ii) A major disaster or emergency designated by the President under the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*);

(4) Where the total quantity of the 1988 or 1989 crop of the commodity that the producers were able to harvest is less than the result of multiplying 65 percent of the farm payment yield established CCC for the crop by the sum of the acreage planted for the harvest and the acreage prevented from being planted (because of the disaster or emergency referred to in paragraph (c)(3) of this section) for the crop; and

(5) Who have applied to the County Farm Service Agency Office which issued the advance deficiency payment, no later than May 31, 1991, for a determination of eligibility for the repayment provisions of this section.

(d) CCC shall assess interest on delinquent debts for 1988 or 1989 overpayments as follows:

(1) CCC shall establish a regional annual interest rate for each of 12 geographic regions, corresponding to the extent practicable, as determined by CCC, with the 12 geographic districts of the Farm Credit System.

(2) Each regional annual interest rate shall not exceed the average of the interest rates charged by Farm Credit System institutions within the region to high-risk borrowers on 1-year operating loans, as determined by CCC based upon information provided to CCC by the Farm Credit System.

(3) Interest shall accrue at the established regional annual interest rate for the region in which the debt arose, beginning November 28, 1990.

(e) CCC shall not offset, in each of the crop years 1990, 1991, and 1992, more than ⅓ of the farm program payments otherwise due a producer, as a result of the producer's delinquency in repaying the overpayment.

(f) CCC shall permit producers to repay the overpayment in three equal installments during each of the crop

years 1990, 1991, and 1992, if the producers document to CCC that they have entered into agreements to obtain multiperil crop insurance policies for the 1991 and 1992 crop years.

[56 FR 32319, July 16, 1991]

PART 1404—ASSIGNMENT OF PAYMENTS

Sec.
1404.1 General statement.
1404.2 Definitions.
1404.3 Payments which may be assigned.
1404.4 Execution of assignment form.
1404.5 [Reserved]
1404.6 Payment to the assignee.
1404.7 Misrepresentations.
1404.8 Liability of the Secretary or disbursing agents.
§ 1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 590h(g).

SOURCE: 54 FR 52883, Dec. 22, 1989, unless otherwise noted.

1404.1 General statement.

This part sets forth the manner in which a person may assign a cash payment which is made by the Farm Service Agency (FSA) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

§ 1404.2 Definitions.

(a)(1) *Assignee* means any person, including any agency of the Federal Government, to whom an assignment of an FSA or CCC payment is made in accordance with this part.

(2) *Assignor* means any person who is the recipient of a payment from FSA or CCC who assigns the payment to another person in accordance with this part.

(3) *Payment* means a cash payment and excludes

(i) Any payment made in accordance with part 1470 of this title;

(i) Price support loan or purchase agreement proceeds; and

(iii) Any payments made in accordance with parts 1487, 1488, 1491, 1492, and 1493 of this title.

(b) The terms defined in parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

§ 1404.3 Payments which may be assigned.

Except as otherwise provided in this part or in individual program regulations, contracts and agreements entered into by FSA or CCC, any payment due a person from FSA or CCC may be assigned.

[54 FR 52883, Dec. 22, 1989, as amended at 56 FR 361, Jan. 4, 1991]

§ 1404.4 Execution of assignment form.

(a)(1) The assignment of any FSA or CCC payment must be made by the execution of Form CCC–36 or Forms CCC–251 and CCC–252. Form CCC–36 is applicable to payments made under programs administered in accordance with 7 CFR parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC–251 and 252 are applicable to all other CCC or FSA programs and contracts.

(2)(i) To be recognized by FSA or CCC, Form CCC–36 must be filed in the county FSA office prior to the time the county committee approves the making of the payment covered by the assignment. To be recognized by FSA or CCC, Forms CCC–251 and 252 must be filed with the FSA or CCC office from which the payment will be made prior to the making of the payment.

(ii) Form CCC–36 or Forms CCC–251 and 252 must be signed by both the assignor and the assignee.

(3) The assignor and the assignee shall promptly notify the appropriate FSA or CCC office of any change affecting the assignment.

(b) [Reserved]

[54 FR 52883, Dec. 22, 1989, as amended at 56 FR 361, Jan. 4, 1991]

1404.5 [Reserved]

§ 1404.6 Payment to the assignee.

(a) The assignee shall be paid the smaller of the amount specified on Form CCC–36 or CCC–251 or the amount of the payment earned under the program or contract covered by the assignment. Any indebtedness owed by the assignor to CCC, FSA, or any other agency of the United States shall be subject to offset.

(b) Any indebtedness owed by the assignor to CCC or FSA shall be offset from any payment which is owed by CCC or FSA without regard to the date of filing of a Form CCC–36 with the applicable FSA or CCC office. Except as provided in paragraph (d) of this section, any indebtedness owed by the assignor to CCC or FSA shall be offset from any payment which is owed by CCC or FSA if such indebtedness was entered on the debt record of the applicable FSA or CCC office prior to the date of the filing of Forms CCC–251 and 252 with the applicable FSA or CCC office.

(c) Any indebtedness owed by the assignor to any agency of the United States other than CCC or FSA which was entered on the debt record of the applicable FSA or CCC office prior to the date of filing of the Form CCC–36 or Forms CCC–251 and 252 with such office shall be offset prior to the making of any payment to the assignee.

(d) Any indebtedness arising under a contract between the assignor and FSA or CCC which is the subject of the assignment shall be offset from the payment prior to the making of any payment to the assignee under such contract without regard to the date of the filing of Form CCC–36 or Forms CCC–251 and 252 with the appropriate FSA or CCC office.

§ 1404.7 Misrepresentations.

If FSA or CCC has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Forms CCC–36, CCC–251 or CCC–252, FSA or CCC shall give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and assignee to be heard, FSA or CCC finds that any material misrepresentation was in fact made, FSA or CCC shall notify the assignor and the assignee of such finding, and void such assignment, and insofar as concerns FSA, CCC or any other agency of the United States, the assignment shall be of no effect.

§ 1404.8 Liability of the Secretary or disbursing agents.

Neither the United States, the CCC, the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the United States, the CCC, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

§ 1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 35 and have been assigned OMB control number 0560–0004.

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

Sec.

1405.1 Interest.
1405.2 Basic rule of fractions.
1405.3 Effect of changes in regulations.
1405.4 Delegations of authority.
1405.5 Notice and comment.
1405.6 Crop insurance requirement.

AUTHORITY: 15 U.S.C. 714b and 714c.

SOURCE: 61 FR 37575, July 18, 1996, unless otherwise noted.

§ 1405.1 Interest.

(a) Except as may otherwise be determined by CCC as provided in individual program regulations, program contracts or such other means as deemed appropriate by CCC the rate of interest that is applicable to CCC loans shall be equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date the loan is disbursed by CCC, plus 1 percent. This rate of interest shall be in effect until the earlier of the maturity of the loan or the next January 1.

(b) The rate of interest applicable to all CCC loans that are outstanding as of January 1 of any year shall be adjusted as of such date to equal the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on such date, plus 1 percent. This rate shall be in effect until the earlier of the maturity of the loan or the next January 1. The rate of interest applicable to CCC

loans as of January 1 of any year shall be announced by CCC by press release or other means.

§ 1405.2 Basic rule of fractions.

Fractions shall be rounded in accordance with the provisions of 7 CFR part 718.

§ 1405.3 Effect of changes in regulations.

Unless otherwise indicated, the regulations in effect in this chapter as of April 4, 1996, shall continue to apply to the 1991 through 1995 crops of agricultural commodities, to milk produced on or before May 1, 1996, and to contracts entered into prior to any amendments to this chapter after that date.

§ 1405.4 Delegations of authority.

The delegations of authority relating to the CCC programs and activities are set forth in the by-laws of CCC and in dockets approved by the CCC Board of Directors. Copies of the By-laws and the dockets may be obtained from the Secretary of CCC.

§ 1405.5 Notice and comment.

The level of loans, purchases and payments made in accordance with the programs set forth in this chapter shall be determined without regard to the notice and comment provisions of 5 U.S.C. 553.

§ 1405.6 Crop insurance requirement.

(a) To be eligible for any benefits or payments under 7 CFR parts 1410, 1412, 1421, 1427, 1435, 1443, 1446, or 1464, the producer must obtain at least the catastrophic level of insurance for each crop of economic significance in which the producer has an interest or provide a written waiver to the Secretary that waives any eligibility for emergency crop loss assistance in connection with the crop, if insurance is available in the county for the crop. In meeting this requirement, the producer may:

(1) Obtain at least the catastrophic level of crop insurance in all counties for each crop of economic significance in which the producer has an interest;

(2) Obtain at least the catastrophic level of crop insurance for some, but not all, crops of economic significance for which the producer has an interest, and sign a waiver; or

(3) Sign a waiver that waives any eligibility for crop loss assistance in connection with the producer's crop.

(b) *Crop of economic significance.* The term ''crop of economic significance'' means a crop that has contributed in the previous year, or is expected to contribute in the current crop year, 10 percent or more of the total expected value of all crops grown by the producer. However, notwithstanding the preceding sentence, if the total expected liability under the catastrophic risk protection endorsement is equal to or less than the administrative fee required for the crop, such crop will not be considered a crop of economic significance.

PART 1407—DEBARMENT AND SUSPENSION (Eff. 1–3–00)

Sec.
1407.1 Purpose.
1407.2 Nonprocurement debarment and suspension.
1407.3 Procurement debarment and suspension.

AUTHORITY: 15 U.S.C. 714b.

SOURCE: 64 FR 67471, Dec. 2, 1999, unless otherwise noted.

§ 1407.1 Purpose.

This part specifies the policies that CCC will follow in taking action to debar or suspend individuals or firms from participation in Federal nonprocurement and procurement activities.

§ 1407.2 Nonprocurement debarment and suspension.

(a) CCC will proceed under 7 CFR part 3017 when taking action to debar or suspend participants or potential participants in CCC's nonprocurement activities.

(b) The debarring and suspending official for nonprocurement actions taken by CCC shall be as follows: For actions initiated on behalf of CCC by the Foreign Agricultural Service (FAS), the Food and Nutrition Service (FNS), or the Agricultural Marketing Service (AMS), the debarring and suspending official will be the Vice President, CCC, who is the Administrator

FAS, FNS, or AMS, respectively. For actions initiated on behalf of CCC by the Natural Resources Conservation Service (NRCS), the official will be the Vice President, CCC, who is the Chief, NRCS.

§ 1407.3 Procurement debarment and suspension.

CCC will proceed under this part when taking action to debar or suspend contractors with CCC or participants or potential participants in CCC's procurement activities. CCC will apply the provisions of 48 CFR part 409, subpart 409.4, in such actions, with the exception that the debarring and suspending official will be the Executive Vice President, CCC, or a designee.

PART 1409—MEETINGS OF THE BOARD OF DIRECTORS OF COMMODITY CREDIT CORPORATION

Sec.
1409.1 General statement.
1409.2 Definitions.
1409.3 Open meetings.
1409.4 Exemptions.
1409.5 Closure of meetings.
1409.6 Notices to the public.
1409.7 Records retention.
1409.8 Public inspection and copying of records; applicable fees.
1409.9 Report to Congress.

AUTHORITY: Sec. 3(a), 90 Stat. 1244 (5 U.S.C. 552b), and sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b).

SOURCE: 42 FR 14673, Mar. 16, 1977, unless otherwise noted.

§ 1409.1 General statement.

(a) It is the policy of Commodity Credit Corporation, under the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b) to make available to the public, to the fullest extent practicable, information regarding the decision process of the Board of Directors of Commodity Credit Corporation.

(b) This part sets forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of Commodity Credit Corporation in carrying out its responsibilities under the statutes administered by Commodity Credit Corporation.

§ 1409.2 Definitions.

(a) The term *Board* means the Board of Directors of Commodity Credit Corporation.

(b) The term *Director* means an individual who is a member of the Board of Directors of Commodity Credit Corporation and includes the Secretary of Agriculture, who is by statute an ex-officio director and Chairman of the Board.

(c) The term *General Counsel* means the General Counsel or the Assistant General Counsel of Commodity Credit Corporation.

(d) The term *meeting* means the deliberations of at least five (quorum) Directors of the Board of Directors of Commodity Credit Corporation where such deliberations determine or result in the joint conduct or disposition of official Board business but shall not include deliberations for:

(1) Closing a portion or portions of a meeting or series of meetings as provided in § 1409.5 (a) and (b) of this part, or

(2) Calling a meeting at a date earlier than announced as provided in paragraph 1409.6(a)(2) of this part; or

(3) Changing the subject matter of a publicly announced meeting as provided in § 1409.6(b) of this part; or

(4) Determining whether or not to withhold from disclosure information pertaining to a meeting or portions of a meeting or series of meetings as provided in § 1409.5(b) of this part.

(e) The term *public observation* means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Board, within the limits of reasonable and comfortable accommodations made available for such purpose by Commodity Credit Corporation.

§ 1409.3 Open meetings.

Every portion of every meeting of the Board of Directors will be open to public observation except as provided in §§ 1409.4 and 1409.5 of this part.

§ 1409.4 Exemptions.

(a) A portion or portions of a Board meeting may be closed to the public and any information pertaining to such meeting otherwise required by § 1409.3

of this part to be disclosed to the public may be withheld, where the Board determines that public disclosure of information to be discussed at such meetings is likely to—

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practice of Commodity Credit Corporation;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or to an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy, or

(iv) Disclose the identity of a confidential source, and, in the case of a record compiled by a criminal enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to: (i) Lead to significant financial speculation in agricultural commodities or significantly endanger the stability of any financial institution; or

(ii) Significantly frustrate implementation of a proposed Board action except where the Board has already disclosed to the public the content or nature of its proposed action or where Commodity Credit Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern Commodity Credit Corporation's participation in a civil action or proceedings.

(b) Any Board meeting or portion thereof, which may be closed, or any information which may be withheld under paragraph (a) of this section, will not be closed or withheld, respectively, in any case where the Board finds the public interest requires otherwise.

§ 1409.5 Closure of meetings.

(a) *Procedure for closing a majority of the meetings.* (1) A majority of the meetings of the Board will be closed to the public pursuant to exemptions 4, 8, (9)(i) and 10 of § 1409.4(a) of this part. These meetings will include deliberations such as those relating to the levels of price support for various agricultural commodities, the allocation of quantities of commodities for export programs, and the interest rates for commodity loans and farm storage facility loans. Board meetings will be closed pursuant to exemptions 4, 8, (9)(i) and 10 when at least five Directors vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting. A copy of the vote, reflecting

the vote of each Director on the question, will be made available to the public. The Board will, except to the extent that such information is exempt from disclosure under the exemptions in §1409.4(a) of this part, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof, at the earliest practicable time.

(2) The provisions of paragraph (b) of this section and §1409.6, except §1409.6(e), of this part will not apply to any meeting or portion thereof to which paragraph (a) of this section applies.

(b) *Procedure for closing other meetings.* (1) A separate vote of the entire membership of the Board will be taken with respect to each Board meeting a portion or portions of which are proposed to be closed to the public or any information which is proposed to be withheld from the public on the basis of one or more of the exemptions in §1409.4(a) of this part. The vote of each Director will be recorded and no proxy shall be allowed.

(2) A portion or portions of a meeting may be closed on the basis of one or more of the exemptions in §1409.4(a) of this part only when at least five Directors vote to take such action.

(3) A single vote of the entire membership of the Board may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public or with respect to the withholding of any information concerning such series of meetings, on the basis of one or more of the exemptions in §1409.4(a) of this part. Each meeting in such series must involve the same particular matters and must be scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote will be recorded and no proxy vote shall be allowed.

(4) Whenever any person whose interests may be directly affected by a portion of a Board's meeting requests that the Board close such portion to the public on the basis of exemptions (5), (6), or (7) of §1409.4(a) of this part, the Board, upon the request of any one of its members, will vote whether or not to close such portion of the meeting. The vote of each Director participating in such vote will be recorded and no proxy shall be allowed.

(c) *General counsel's certification.* Before every Board meeting closed on the basis of one or more of the exemptions in §1409.4(a) of this part, the General Counsel will publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemption.

§1409.6 Notices to the public.

(a)(1) The Secretary of the Board will make a public announcement at least one week before each Board meeting of (i) the time and place of the meeting, (ii) subject matter of the meeting, except to the extent that such information is exempt from disclosure under §1409.4(a) of this part, (iii) whether the meeting is to be open or closed to the public and (iv) the name and business telephone number of the Secretary of the Board.

(2) Notwithstanding paragraph (a)(1) of this section, less than one week advance public notice for a meeting may be given when at least five Directors determine by recorded vote that the Board business requires that a meeting be called at an earlier date, but in such case, announcement of the meeting will be made at the earliest practicable time.

(b)(1) When the Board votes on whether to close a portion or portions of a meeting or a series of meetings, or with respect to withholding any information concerning such meeting or series of meetings, in accordance with §1409.5(b) of this part, the Secretary of the Board will make available to the public a written copy of such vote reflecting the vote of each member on the question within one business day of such vote.

(2) If the Board votes to close a portion or portions of a meeting or a series of meetings in accordance with §1409.5(b) of this part, the Secretary of the Board will make available to the public within one business day of such vote, (i) a list of the names and affiliations of persons expected to be present at such closed portion or portions of the meeting or series of meetings and (ii) a full written explanation of the Board's action in closing the

portion of portions of the meeting or series of meetings, unless such disclosure would reveal the information that the meeting itself was closed to protect.

(c) The time or place of a board meeting may be changed following the public announcement as required by paragraph (a)(1) of this section only if the Board publicly announces such change or changes at the earliest practicable time.

(d) The subject matter of a Board meeting or the determination of the Board to open or close a meeting or portions thereof to the public, may be changed following the public announcement as required by paragraph (a)(1) of this section only if (i) five Directors determine by recorded vote that Board business so requires and that no earlier announcement of the change was possible and (ii) the Board publicly announces such change and the vote of each Director upon such change at the earliest practicable time.

(e) The Secretary of the Board shall use all reasonable means to keep the public promptly and fully informed of public announcements including the use of a bulletin board outside the office of the Secretary of the Board at the address indicated in §1409.8(b) of this part. Requests for information concerning Board meetings should be addressed to the Secretary of the Board.

(f) Immediately following each public announcement required by this section, the information provided in such public announcement will be submitted for publication in the FEDERAL REGISTER.

(g) The Board usually meets in room 200–A, Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC. Each person interested in attending an open meeting of the Board should notify the Secretary of the Board at least one business day prior to the open meeting of their intention to attend the meeting. Any person who fails to do so may not be accommodated if there is insufficient space in the meeting room.

§1409.7 Records retention.

(a) The Secretary of the Board will maintain the following records for each Board meeting, or portion thereof which is closed to the public pursuant to a vote under §1409.5 of this part:

(1) A copy of the General Counsel's certification required by §1409.5(c) of this part;

(2) A copy of a statement from the presiding officer which sets forth the time and place of the closed meeting or portion thereof and list of persons present; and

(3) A complete verbatim transcript or electronic recording adequate to record fully the proceedings of each Board meeting or portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public on the basis of exemptions (8), (9)(i) or (10) of §1409.4(a) of this part, the Secretary of the Board will maintain either a transcript, electronic recording, or a complete set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote reflecting the vote of each member on the question. All documents considered in connection with any action will be identified in such minutes.

(b) The retention period for the records required by paragraph (a) of this section will be for a period of at least two years after the particular Board meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§1409.8 Public inspection and copying of records; applicable fees.

(a) The Secretary of the Board will make promptly available to the public the transcript, electronic recording, transcription of the recording, or minutes of the discussion of any item on the agenda of a Board meeting, or any item of the testimony of any witness received at the meeting except for such item or items of such discussion or testimony as the Secretary of the Board determines to contain information which may be withheld on the basis of one or more of the exemptions in §1409.4(a) of this part.

(b) Requests for public inspection of electronic recording, transcripts or minutes of Board meetings shall be made to the Secretary of the Board of Directors of Commodity Credit Corporation, Room 218–W, Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250.

(c) The transcripts, minutes, or transcriptions of electronic recordings of a Board meeting will disclose the identity of each speaker, and will be furnished to any person at the actual cost of transcription or duplication.

§ 1409.9 Report to Congress.

The Secretary of Agriculture will annually report to the Congress regarding the Board's compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, the reasons for closing such meetings and a description of any litigation brought against the Board pursuant to the Government in the Sunshine Act, including any costs assessed against Commodity Credit Corporation in such litigation.

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

EDITORIAL NOTE: For FEDERAL REGISTER citations to regulations for previous program years not included in this volume, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PART 1410—CONSERVATION RESERVE PROGRAM

Sec.

1410.1 Administration.
1410.2 Definitions.
1410.3 General description.
1410.4 Maximum county acreage.
1410.5 Eligible persons.
1410.6 Eligible land.
1410.7 Duration of contracts.
1410.8 Conservation priority areas.
1410.9 Alley-cropping.
1410.10 Conversion to trees.
1410.11 Restoration of wetlands.
1410.12–1410.19 [Reserved]
1410.20 Obligations of participant.
1410.21 Obligations of the Commodity Credit Corporation.
1410.22 Conservation plan.
1410.23 Eligible practices.
1410.24–1410.29 [Reserved]
1410.30 Signup.
1410.31 Acceptability of offers.
1410.32 CRP contract.
1410.33 Contract modifications.
1410.34 Extended program protection.
1410.35–1410.39 [Reserved]
1410.40 Cost-share payments.
1410.41 Levels and rates for cost-share payments.
1410.42 Annual rental payments.
1410.43 Method of payment.
1410.44–1410.49 [Reserved]
1410.50 State enhancement program.
1410.51 Transfer of land.
1410.52 Violations.
1410.53 Executed CRP contract not in conformity with regulations.
1410.54 Performance based upon advice or action of the Department.
1410.55 Access to land under contract.
1410.56 Division of program payments and provisions relating to tenants and sharecroppers.
1410.57 Payments not subject to claims.
1410.58 Assignments.
1410.59 Appeals.
1410.60 Scheme or device.
1410.61 Filing of false claims.
1410.62 Miscellaneous.
1410.63 Permissive uses.
1410.64 Paperwork Reduction Act assigned numbers.

AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

SOURCE: 62 FR 7625, Feb. 19, 1997, unless otherwise noted.

§ 1410.1 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. In the field, the regulations in this part will be administered by the State and county FSA committees (''State committees'' and ''county committees,'' respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, the Administrator, FSA, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to

provide data could result in program benefits being withheld or denied.

(f) Notwithstanding other provisions of the preceding paragraphs of this section, the EI, suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality and adequacy of the planned practice to achieve desired objectives shall be determined by the Natural Resource Conservation Service (NRCS) or any other non-USDA source approved by NRCS, in accordance with the Field Office Technical Guide of NRCS or other guidelines deemed appropriate by the NRCS, except that no such determination by NRCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

(g) State committees, with NRCS, may develop a State evaluation process to rank acreage based on State-specific goals and objectives where such an evaluation process would further the goals of CRP. Such State committees may choose between developing a State ranking system or using the national ranking system. States' ranking processes shall be developed based on recommendations from State Technical Committees, follow national guidelines, and be approved by the Deputy Administrator.

(h) CCC may consult with the Forest Service (FS), a State forestry agency, or other organization for such assistance as is determined by CCC to be necessary for developing and implementing conservation plans which include tree planting as the appropriate practice or as a component of a practice.

(i) CCC may consult with the Cooperative State Research, Education, and Extension Service to coordinate a related information and education program as deemed appropriate to implement the Conservation Reserve Program (CRP).

(j) CCC may consult with the U.S. Fish and Wildlife Service (FWS) or State wildlife agencies for such assistance as is determined necessary by CCC to implement the CRP.

(k) The regulations governing the CRP as of February 11, 1997, shall continue to be applicable to contracts in effect as of that date. The regulations set forth in this part as of February 12, 1997, shall be applicable to contracts executed on or after that date.

§ 1410.2 Definitions.

The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugar cane planted or produced in a State or alfalfa and other multi year grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by CCC, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Alley-cropping means the practice of planting rows of trees surrounded by a strip of vegetative cover, alternated with wider strips of agricultural commodities planted in accordance with a conservation plan approved by the local conservation district and CCC.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

Alternative perennials means woody species of plants grown on certain CRP acres, including, but not limited to shrubs, bushes, and vines.

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract which, subject to the availability of funds, is made to a participant to compensate such participant for placing eligible land in the CRP.

Applicant means a person who submits an offer to CCC to enter into a CRP contract.

Arid area means acreage located west of the 100th meridian that receives less than 25 inches of average annual precipitation.

Bid or offer means,unless the context indicates otherwise, if required by CCC, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the CRP.

Conservation district means a political subdivision of a State, Native American Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions, and supporting information, for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures.

Conservation priority area means areas so designated by the Deputy Administrator with actual and adverse water quality or habitat impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws and to meet other conservation needs, such as for air quality, as determined by the Deputy Administrator.

Contour grass strip means a vegetation area that follows the contour of the land, the width of which is determined using the appropriate FOTG and which is so designated by a conservation plan developed under this part.

Contract period means the term of the contract which shall be not less than 10, nor more than 15, years.

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract.

Cropland means land defined as cropland in accordance with the provisions of part 718 of this title, except for land in terraces that are no longer capable of being cropped.

Cropped wetlands means farmed wetlands and wetlands farmed under natural conditions.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Environmental Quality Incentives Program (EQIP) means the program authorized by the Food Security Act of 1985, as amended, in which eligible persons enter into contracts with CCC to address threats to soil, water, and related natural resources and for other purposes.

Erodibility index (EI) means the factor, as calculated by NRCS, used to determine the inherent erodibility of a soil by dividing the potential average annual rate of erosion without management for each soil by the predetermined T value for the soil.

Farmed wetlands means land defined as farmed wetlands in accordance with the provisions of part 12 of this title.

Federally owned land means land owned by the Federal Government or any department, instrumentality, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or croplines, as determined by CCC.

Field Office Technical Guide (FOTG) means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Field windbreak, shelterbelt, and living snowfence mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, as determined by CCC, which are designated as such practices in a conservation plan and which are planted for the purpose of reducing wind erosion, snow control, wildlife habitat, and energy conservation.

Filter strip means a strip or area of vegetation the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality and of a width determined appropriate for the purpose by the applicable FOTG.

Highly erodible land (HEL) means that land determined to be HEL in accordance with the provisions of part 12 of this title.

Landlord means a person who rents or leases acreage to another person.

Local FSA office means the FSA office serving the area in which the FSA records are located for the farm or ranch.

Operator means a person who is in general control of the farming operation on the farm, as determined by CCC.

Owner means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly and a person who has life-estate in a property.

Participant means an owner or operator or tenant who has entered into a contract.

Payment period means the 10- to 15-year contract period for which the participant receives an annual rental payment.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a life span of 10 or more years, or trees.

Permanent wildlife habitat means a permanent vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other environmental concerns.

Practice means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to CRP and NRCS standards and specifications as a part of a conservation management system.

Predominantly highly erodible field means that land defined has a predominantly highly field in accordance with the provisions of part 12 of this title.

Quota means the pounds of tobacco or peanuts or other commodity allocated to a farm for commodity support purposes or control pursuant to the terms of the Agricultural Adjustment Act of 1938, as amended.

Riparian buffer means a strip or area of vegetation of a width determined appropriate by the applicable FOTG the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality which are also intended to provide shade to reduce water temperature for improved habitat for aquatic organisms and supply large woody debris for aquatic organisms and habitat for wildlife.

Soil loss tolerance (T) means the maximum average annual erosion rate specified in the FOTG that will not adversely impact the long term productivity of the soil.

State Technical Committee means that committee established pursuant to 16 U.S.C. 3861 to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

State water quality priority areas means any area so designated by the State committee and NRCS, in consultation with the State Technical Committee where agricultural nonpoint source pollutants or agricultural point source pollutants contribute or create the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State water quality laws. These areas may include areas designated under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) as water quality protection areas, sole source aquifers or other designated areas that result from agricultural nonpoint sources of pollution. Acreage in these areas may be determined eligible as conservation priority areas.

Technical assistance means the assistance provided in connection with the CRP to owners or operators by NRCS, FS, or another source as approved by the NRCS or FS, as appropriate, in classifying cropland, developing conservation plans, determining the eligibility of land, and implementing and certifying practices, and forestry issues.

Water bank program (WBP) means the program authorized by the Water Bank

Act of 1970, as amended, in which eligible persons enter into 10-year agreements to preserve, restore, and improve wetlands.

Water cover means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

Wellhead protection area means the area designated by the appropriate State agency with an Environmental Protection Agency approved Wellhead Protection Program for water being drawn for public use, as defined for public use by the Safe Drinking Water Act, as amended.

Wetland means land defined as wetland in accordance with provisions of part 12 of this title.

Wetlands farmed under natural conditions means land defined as wetlands farmed under natural conditions in accordance with provisions of part 12 of this title.

Wetlands Reserve Program (WRP) means the program authorized by the Food Security Act of 1985, as amended, in which eligible persons enter into long-term agreements to restore and protect wetlands.

§ 1410.3 General description.

(a) Under the CRP, CCC will enter into contracts with eligible participants to convert eligible land to a conserving use for a period of time of not less than 10 nor more than 15 years in return for financial and technical assistance.

(b) A conservation plan for eligible acreage must be obtained by a participant which must be approved by the conservation district in which the lands are located unless the conservation district declines to review the plan in which case NRCS may take such further action as is needed to account for lack of such review.

(c) The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including encouraging more permanent conservation practices and tree planting.

(d) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental or easement payments, or tax benefits from a State, subdivision of such State, or a private organization in return for enrolling lands in CRP. However, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any other provision of law, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.4 Maximum county acreage.

The maximum acreage which may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county of which no more than 10 percent of the cropland in the county may be subject, in the aggregate, to a CRP or WRP easement, unless CCC determines that such action would not adversely affect the local economy of the county. This restriction on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Eligible persons.

(a) In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner, operator, or tenant of eligible land and:

(1) If an operator of eligible land, seeking to participate without the owner, must have operated such land for at least 12 months prior to the close of the applicable signup period and must provide satisfactory evidence that such operator will be in control of such eligible land for the full term of the CRP contract period;

(2) If an owner of eligible land, must have owned such land for at least 12 months prior to the close of the applicable signup period, unless:

(i) The new owner acquired such land by will or succession as a result of the death of the previous owner;

(ii) The only ownership change in the 12 month period occurred due to foreclosure on the land and the owner of

the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with State law;

(iii) As determined by the Deputy Administrator, the circumstances of the acquisition are such that present adequate assurance that the new owner of such eligible land did not acquire such land for the purpose of placing it in the CRP; or

(3) If a tenant, the tenant is a participant with an eligible owner or operator.

(b) Notwithstanding paragraph (a) of this section, under continuous signup provisions authorized by §1410.30, an otherwise eligible person must have owned or operated, as appropriate, the eligible land for at least 12 months prior to submission of an offer.

§1410.6 Eligible land.

(a) In order to be eligible to be placed in the CRP, land:

(1) Must be cropland that:

(i) Has been annually planted or considered planted to an agricultural commodity in 2 of the 5 most recent crop years, as determined by the Deputy Administrator, provided further that field margins which are incidental to the planting of crops may also be considered qualifying cropland to the extent determined appropriate by the Deputy Administrator; and

(ii) Is physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator.

(2) Must be marginal pasture land, as determined by the Deputy Administrator, that:

(i) Is enrolled or has recently been enrolled in the WBP provided:

(A) The acreage is in the final year of the WBP agreement or, if not in the final year of the WBP agreement and only for enrollments in the CRP for FY 1997, is acreage for which the WBP agreement expired on December 31, 1996, where the land would be considered in compliance if such agreement was still in effect, as determined by the Deputy Administrator;

(B) The acreage is not classified as naturally occurring type 3 through 7 wetlands, as determined by the Deputy Administrator regardless of whether the acreage is or is not protected by a Federal agency easement or mortgage restriction (types 3 through 7 wetlands that are normally artificially flooded shall not be precluded from eligibility), and;

(C) Enrollment in CRP would enhance the environmental benefits of the site, as determined by Deputy Administrator; or

(ii) Is determined to be suitable for use as a riparian buffer. A field or portion of a field of marginal pasture land may be considered to be suitable for use as a riparian buffer only if, as determined by NRCS, it:

(A) Is located adjacent to permanent stream corridors excluding corridors that are considered gullies or sod waterways; and

(B) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbody; or

(3) Must be acreage currently enrolled in the CRP provided the scheduled expiration date of the current CRP contract is to occur before the available effective date of a new CRP contract, as determined by the Deputy Administrator, provided the acreage is otherwise eligible according to this part, as determined by the Deputy Administrator.

(b) Any land qualifying under the provisions of paragraph (a)(1) must also, to be eligible for a contract:

(1) Be a field or portion of a field determined to be suitable for use as a permanent wildlife habitat, filter strip, riparian buffer, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, other uses as may be determined by the Deputy Administrator, vegetation on salinity producing areas, including any applicable recharge area, or any area determined eligible for CRP based on wetland or wellhead protection area criteria to be eligible to be placed in the CRP. A field or portion of a field may be considered to be suitable for use as a filter strip or riparian buffer only if it, as determined by NRCS:

(i) Is located adjacent to a stream, other waterbody of a permanent nature (such as a lake, pond, or sinkhole), or

wetland excluding such areas as gullies or sod waterways; and

(ii) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbody; or

(2)(i) Be a field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by NRCS. In addition such land must:

(A) Be expected to flood a minimum of once every 10 years; and

(B) Have evidence of scour erosion as a result of such flooding.

(ii) To the extent practicable, be the actual affected cropland areas of a field; however, the entire cropland area of an eligible field may be enrolled if:

(A) The size of the field is 9 acres or less; or

(B) More than one third of the cropland in the field is land which lies between the water source and the inland limit of the scour erosion.

(iii) If the full field is not eligible for enrollment under this paragraph (b)(2), be that portion of the cropland between the waterbody and the inland limit of the scour erosion together with, as determined by the Deputy Administrator, additional areas which would otherwise be unmanageable and would be isolated by the eligible areas.

(iv) Be planted to an appropriate tree species according to the FOTG, unless tree planting is determined to be inappropriate by NRCS, in consultation with Forest Service, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover in accordance with the FOTG; or

(3) Be contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production so long as water quality objectives, with respect to such land, cannot be obtained under other Federal programs, including but not limited to EQIP authorized under part 1466 of this chapter; or

(4) Be devoted to certain covers, as determined by the Deputy Administrator, which are established and maintained according to the FOTG provided such acreage is not required to be maintained as such under any life-span obligations, as determined by the Deputy Administrator; or

(5) Be non-irrigated or irrigated cropland which produces or serves as the recharge area, as determined by the Deputy Administrator, for saline seeps, or acreage which is functionally related to such saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface; or

(6) Be considered HEL according to conservation compliance provisions under part 12 of this chapter; or

(7) For redefined fields, have an EI of greater than or equal to 8, calculated by using the weighted average of the EI's of soil map units within the field; or

(8) Be within a public wellhead protection area or in an approved Hydrologic Unit Area; or

(9) Be within a designated conservation priority area; or

(10) Be designated as a cropped wetland and appropriate associated acreage, as determined by the Deputy Administrator; or

(11) Be cropland which, as determined by the Deputy Administrator, is associated with noncropped wetlands and would provide significant environmental benefits; or

(c) Notwithstanding paragraphs (a) and (b) of this section, land shall be ineligible for enrollment if, as determined by the Deputy Administrator, land is:

(1) Federally owned land unless the applicant has a lease for the contract period;

(2) Land on which the use of the land is restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities except for eligible land under paragraph (a)(2) of this section; or

(3) Land already enrolled in the CRP unless the scheduled expiration date of the current contract is to occur before the available effective date of a new CRP contract, as determined by the Deputy Administrator.

§ 1410.7 Duration of contracts.

(a) Except as provided in paragraph (b) of this section, contracts under this part shall be for a term of 10 years.

(b) In the case of land devoted to riparian buffers, filter strips, restoration of wetlands, hardwood trees, shelterbelts, windbreaks, wildlife corridors, or other practices deemed appropriate by CCC under the original terms of a contract subject to this part or for land devoted to eligible practices under a contract modified under § 1410.10, the participant may specify the duration of the contract provided that such contracts must be at least 10 years and no more than a total of 15 years in length.

(c) All contracts shall expire on September 30 of the appropriate year.

§ 1410.8 Conservation priority areas.

(a) CCC may designate National conservation priority areas according to paragraph (c) of this section.

(b) State FSA committees, in consultation with NRCS and State Technical Committees, may submit a recommendation to the Deputy Administrator within guidelines established by the Deputy Administrator for designation of conservation priority areas. Such recommendations should contain clearly defined conservation and environmental objectives and analysis of how CRP can cost-effectively address such objectives. The purpose of the conservation priority area designation is to enhance the CRP by better addressing conservation and environmental issues in a planned and coordinated manner within a State. Generally, the total acreage of conservation priority areas, in aggregate, shall not total more than 10 percent of the cropland in a State unless there are identified and documented extraordinary environmental needs, as determined by Deputy Administrator.

(c) A region shall be eligible for designation as a priority area only if the region has actual significant adverse water quality or wildlife habitat impacts related to activities of agricultural production or if the designation helps agricultural producers to comply with Federal and State environmental laws.

(d) Conservation priority area designations shall expire after 5 years unless redesignated, except they may be withdrawn:

(1) Upon application by the appropriate State water quality agency; or

(2) By the Deputy Administrator.

(e) In those areas designated as conservation priority areas, under this section, special emphasis will be placed on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements, air quality, or wildlife habitat (especially for currently listed threatened and endangered species or to prevent other species from becoming threatened and endangered), as determined by the Deputy Administrator.

§ 1410.9 Alley-cropping.

(a) Alley-cropping on CRP land may be permitted by CCC if:

(1) The land is planted to, or converted to, hardwood trees in accordance with § 1410.10;

(2) Agricultural commodities are planted in accordance with a prior, site-specific and NRCS approved conservation plan in close proximity to such hardwood trees; and

(3) The owner and operator of such land agree to implement appropriate conservation measures on such land.

(b) CCC may solicit bids for alley-cropping permission for CRP land. Annual rental payments for the term of any contract modified under this section shall be reduced by at least 50 percent of the original amount of the total rental payment in the original contract and, in the case of any contract modified to change from another cover crop, the total annual rental payments over the term of any such contract may not exceed the total annual rental payments specified in the original contract.

(c) The actual reduction in rental payment will be determined by CCC, based upon criteria, such as percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping.

(d) The area available for cropping will be chosen according to the FOTG and will be farmed in accordance with an approved conservation plan so as to minimize erosion and degradation of water quality during those years when

the areas are devoted to an agricultural commodity.

§ 1410.10 Conversion to trees.

An owner or operator who has entered into a contract prior to November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, which is devoted to permanent vegetative cover, from such cover to hardwood trees (including alley cropping and riparian buffers limited to hardwood trees where permitted by CCC), windbreaks, shelterbelts, or wildlife corridors.

(a) With respect to any contract modified under this section, the participant may elect to extend such contract in accordance with the provisions of § 1410.7(b).

(b) With respect to any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner of such land must agree to maintain such plantings for a time period established by the Deputy Administrator.

(c) CCC shall, as it determines appropriate, pay up to 50 percent of the eligible cost of establishing new conservation measures authorized under this section, except that the total cost-share paid with respect to such contract, including cost-share assistance paid when the original cover was established, may not exceed the amount by which CCC would have paid had such land been originally devoted to such new conservation measures.

(d) With respect to any contract modified under this section, the participant must participate in the Forest Stewardship Program (16 U.S.C. 2103a).

§ 1410.11 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such eligible acres subject to such contract that are devoted to an approved cover from the CRP to the WRP. Transferred acreage shall be terminated from the CRP effective the day a WRP easement is filed. Participants will receive a prorated CRP annual payment for that part of the year the acreage was enrolled in the CRP according to § 1410.42. Refunds of cost-share payments or any applicable incentive payments need not be required unless specified by the Deputy Administrator.

(b) An owner or operator who has enrolled acreage in the CRP may, as determined and approved by CCC, restore suitable acres to wetlands with cost-share assistance provided that Federal cost-share assistance has not been previously provided specifically for wetland restoration on the proposed restoration site. In addition to the cost-share limitation in § 1410.41 of this part, an additional one time financial incentive may be provided to encourage restoration of the hydrology of the site.

§ 1410.12—§ 1410.19 [Reserved]

§ 1410.20 Obligations of participant.

(a) All participants subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan, which is part of such contract, in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control and CCC agrees to a modified plan;

(3) Establish temporary vegetative cover when required by the conservation plan or, as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established;

(4)(i) A reduction in the aggregate total quotas and acreage allotments for the contract period for each farm which contains land subject to such CRP contract by an amount based upon the ratio between the acres in the CRP contract and the total cropland acreage on such farm. Quotas and acreage allotments reduced during the contract period shall be returned at the end of the contract period in the same amounts as would apply had the land not been enrolled in the CRP unless CCC approves, in accordance with the

provisions of §1410.34, an extension of such protection; and

(ii) reduce production flexibility contract acres enrolled under part 1412 of this chapter or CRP acres enrolled under this part so that the total of such acres does not exceed the total cropland on the farm;

(5) Comply with all requirements of part 12 of this title;

(6) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time approved in accordance with instructions issued by the Deputy Administrator;

(7) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the CRP contract period;

(8) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(9) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover is adequately protected and to provide such maintenance as necessary, or may be specified in the CRP conservation plan, to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other needs, as determined by the Deputy Administrator; and

(10) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other contract participants for compliance with such contract and the provisions of this part and for any refunds or payment adjustments which may be required for violations of any of the terms and conditions of the CRP contract and provisions of this part.

[62 FR 7625, Feb. 19, 1997, as amended at 65 FR 7953, Feb. 16, 2000]

§1410.21 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this part;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP contract;

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP contract; and

(d) Permit grazing on CRP land to the extent determined appropriate by the Deputy Administrator where the grazing is incidental to the gleaning of crop residues on fields where the contracted land is located. Such incidental gleaning shall be limited to the 7-month period in which grazing of conservation use acreage was previously allowed, as determined by CCC, in a State under the provisions of the Agricultural Act of 1949, as amended, or after the producer harvests the grain crop of the surrounding field. Further, CCC may provide approval of the incidental grazing of the CRP, but only in exchange for an applicable reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

(e) Provide approval of normal forestry maintenance such as pruning, thinning, and timber stand improvement on lands converted to forestry use only in accordance with a conservation plan in exchange for an applicable reduction in the annual rental payment as determined appropriate by the Deputy Administrator.

§1410.22 Conservation plan.

(a) The applicant shall develop and submit a conservation plan which is acceptable to NRCS and is approved by the conservation district for the land to be entered in the CRP. If the conservation district declines to review the conservation plan, such approval by the conservation district may be waived.

(b) The practices included in the conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the

productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public well head, or achieve other environmental benefits as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the conservation plan. Such tree planting plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) If applicable, the conservation plan shall address the goals included in the conservation priority designation authorized under § 1410.8 of this part.

(e) All conservation plans and revisions of such plans shall be subject to the approval of CCC and NRCS.

§ 1410.23 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all standards needed to cost-effectively:

(1) Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, forest trees, and permanent wildlife habitat;

(2) Meet other environmental benefits, as applicable, for the contract period; and

(3) Accomplish other purposes of the program.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by the Deputy Administrator for purposes such as the enhancement of wildlife or the improvement of water quality. Such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising for commercial purposes.

§§ 1410.24–1410.29 [Reserved]

§ 1410.30 Signup.

Offers for contracts shall be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems desirable.

§ 1410.31 Acceptability of offers.

(a) Except as provided in paragraph (c) of this section, producers may submit bids for the amounts they are willing to accept as rental payments to enroll their acreage in the CRP. The bids shall, to the extent practicable, be evaluated on a competitive basis in which the bids selected will be those where the greatest environmental benefits relative to cost are generated, provided the bid is not in excess of the maximum acceptable payment rate established for the for the area offered by or for the Deputy Administrator.

(b) In evaluating contract offers, different factors, as determined by CCC, may be considered from time to time for priority purposes to accomplish the goals of the program. Such factors may include, but are not limited to:

(1) Soil erosion;

(2) Water quality (both surface and ground water);

(3) Wildlife benefits;

(4) Conservation priority area designations;

(5) Soil productivity;

(6) Conservation compliance considerations;

(7) Likelihood that enrolled land will remain in conserving uses beyond the contract period, which may be indicated by, for example, tree planting, permanent wildlife habitat, or commitments by a participant to a State or other entity to extend the conservation plan;

(8) Air quality; and

(9) Cost of enrolling acreage in the program.

(c) Acreage determined eligible for continuous signup, as provided in § 1410.30, shall be automatically accepted in the program if the:

(1) Land is eligible in accordance with the applicable provisions of § 1410.6, as determined by the Deputy Administrator;

(2) Applicant is eligible in accordance with the provisions of § 1410.5; and

(3) Applicant accepts either the maximum payment rate CCC is willing to offer to enroll the acreage in the program or a lesser rate.

§ 1410.32 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract will be comprised of:

(1) The terms and conditions for participation in the CRP;

(2) The conservation plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c)(1) In order to enter into a CRP contract, the applicant must submit an offer to participate as provided in § 1410.30;

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC. The applicant shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and the program.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The applicant; and

(2) The owners of the cropland to be placed in the CRP, if applicable.

(e) The Deputy Administrator is authorized to approve CRP contracts on behalf of CCC.

(f) CRP contracts may be terminated by CCC before the full term of the contract has expired if:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC according to terms and conditions as determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) Acreage is enrolled in another State, Federal or local conservation program;

(5) The CRP practice fails after a certain time period, as determined by the Deputy Administrator, and the county committee determines the cost of restoring the practice outweighs the benefits received from the restoration;

(6) The CRP contract was approved based on erroneous eligibility determinations; or

(7) It is determined by CCC that such a release is needed in the public interest.

(g)(1) Contracts for land enrolled in CRP before January 1, 1995, which have been in effect for at least 5 years may be unilaterally terminated by all CRP participants on a contract except for contract acreage:

(i) Located within a width determined appropriate by the applicable FOTG of a perennial stream or other permanent waterbody to reduce pollution and to protect surface and subsurface water quality;

(ii) On which a CRP easement is filed;

(iii) That is considered to be a wetland by NRCS;

(iv) Located within a wellhead protection area;

(v) That is subject to frequent flooding, as determined by the Deputy Administrator;

(vi) That may be required to serve as a wetland buffer according to the FOTG to protect the functions and values of a wetland; or

(vii) On which there exist one or more of the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the conservation plan:

(A) Grass waterways;

(B) Filter strips;

(C) Shallow water areas for wildlife;

(D) Bottom land timber established on wetlands;

(E) Field windbreaks; and

(F) Shelterbelts.

(2) With respect to terminations under this paragraph:

(i) Any land for which an early termination is sought must have an EI of 15 or less;

(ii) The termination shall become effective 60 days from the date the participant submits notification to CCC of the participant's desire to terminate the contract;

(iii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods, provided that the acreage otherwise meets the current eligibility criteria; and

(iv) Participants shall be required to meet conservation compliance requirements of part 12 of this title to the extent applicable to other land.

(h) Except as allowed and approved by CCC where the new owner of land enrolled in CRP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in the contract. CCC, in its discretion, may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purposes of the program. Further, a refund of an annual rental and cost-share payment need not be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the United States, as determined by CCC.

§ 1410.33 Contract modifications.

(a) By mutual agreement between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity under extraordinary circumstances during a crop year on all or part of the land subject to the CRP contract as determined by the Deputy Administrator;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made available to the extent otherwise allowed by law.

(d) CCC may terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

§ 1410.34 Extended program protection.

(a) In the final year of the contract, participants may, subject to the terms and conditions announced by CCC request to extend the preservation of quota and acreage allotment history for 5 years (and, if announced by CCC, in successive 5-year increments). Such approval may be given by CCC only if the participant agrees to continue for that period, but without payment, to abide by the terms and conditions which applied to the relevant contract relating to the conservation of the property for the term in which payments were to be made.

(b) Where such an extension is approved, no additional cost-share, annual rental, or other payment shall be made.

(c) Haying and grazing of the acreage subject to such an extension may be permitted during the extension period, except during any consecutive 5-month period between April 1 and October 31 of any year as established by the State committee. In the event of a natural disaster, CCC may permit unlimited haying and grazing of such acreage.

(d) In the event of a violation of any CRP contract extended under this section, CCC may reduce or terminate, retroactively, prospectively, or both, the amount of quota, and acreage allotment history otherwise preserved under the extended contract.

§§ 1410.35–1410.39 [Reserved]

§ 1410.40 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, cost-share payments may be made under the CRP only for the cost-effective establishment or installation of an eligible practice.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any

eligible practices which have been previously established, or for which such owner or operator has received cost-share assistance from any Federal agency.

(d) Except as provided for under § 1410.10(c), cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhanced water quality, wildlife habitat, or increased protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount which, when added to assistance from other sources, exceeds the cost of the practices.

(f) CCC shall not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the establishment of the cover crop on land subject to such contract.

§ 1410.41 Levels and rates for cost-share payments.

(a) As determined by the Deputy Administrator, CCC shall not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan, except that CCC may allow cost-share payments for maintenance costs to the extent required by § 1410.40 and CCC may determine the period and amount of such cost-share payments.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by the Deputy Administrator.

(c) A one-time financial incentive, may be offered to participants who restore the hydrology of eligible wetlands in accordance with the provisions of § 1410.11(b) or other lands as determined by the Deputy Administrator; such incentives will not be greater than 25 percent of the cost of restoring such wetlands or other lands, as determined by CCC.

(d) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental payments, or tax benefits from a State, subdivision of such State, or a private organization in return for enrolling lands in CRP. However, as provided under § 1410.40(f) of this part, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.42 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) The annual rental payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(c) The maximum amount of rental payments which a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at part 1400 of this chapter shall be applicable in making eligibility and ''person'' determinations as they apply to payment limitations under this part.

(d) In the case of a contract succession, annual rental payments shall be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments shall be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be based on the actual days of ownership of the property.

(e) CCC shall, when appropriate, prepare a schedule for each county that

shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. The schedule will be posted in the local FSA office. As determined by the Deputy Administrator, the schedule shall indicate, when appropriate, that:

(1) Contracts offered by producers who request rental payments greater than the schedule for their soil(s) will be rejected;

(2) Offers of contracts that are expected to provide especially high environmental benefits, as determined by the Deputy Administrator, may be accepted without further evaluation when the requested rental rate is less than or equal to the corresponding soil schedule; and

(3) Otherwise qualifying offers shall be ranked competitively based on factors established under § 1410.31 of this part in order to provide the most cost-effective environmental benefits, as determined by the Deputy Administrator.

(f) Additional financial incentives may be provided to producers offering contracts expected to provide especially high environmental benefits through an increased annual rental payment or incentive payment as determined by the Deputy Administrator.

§ 1410.43 Method of payment.

Except as provided in § 1410.50, payments made by CCC under this part may be made in cash or other methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§§ 1410.44–1410.49 [Reserved]

§ 1410.50 State enhancement program.

(a) For contracts to which a State, political subdivision, or agency thereof has succeeded in connection with an approved conservation reserve enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payments per year that a person may receive under this part shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such enhancement programs carried out by such State, political subdivision, or agency thereof which has been approved for that purpose by CCC.

(b) CCC may enter into other agreements in accordance with terms deemed appropriate by CCC, with States to use the CRP to cost-effectively further specific conservation and environmental objectives of that State and the nation.

§ 1410.51 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, as determined by the Deputy Administrator, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC with respect to such transferred land.

(2) With respect to the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations under the CRP contract of the previous participant.

(3) If the new owner or operator becomes a successor to a CRP contract with CCC, then, except as otherwise determined appropriate by the Deputy Administrator:

(i) Cost-share payments shall be made to the participant, past or present, who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.42.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Must forfeit all rights to any future payments with respect to such acreage;

(2) Shall comply with the provisions of § 1410.32(h); and

(3) Refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by the Deputy Administrator.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the participants on such contract, such operator may, as permitted by CCC, continue to receive payments provided for in such contract so long as:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.52 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this paragraph:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together with interest; and

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.53 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with the provisions of this part, the provisions of the regulations shall prevail.

§ 1410.54 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1410.55 Access to land under contract.

(a) Any representative of the Department, or designee thereof, shall be provided by the applicant or participant as the case may be, with access to land which is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the CRP contract.

§ 1410.56 Division of program payments and provisions relating to tenants and sharecroppers.

(a) Payments received under this part shall be divided in the manner specified in the applicable contract or agreement and CCC shall ensure that producers who would have an interest in acreage being offered receive treatment which CCC deems to be equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person's eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have

an interest in the acreage offered for enrollment in the CRP.

(b) CCC may remove an operator or tenant from a CRP contract when the operator or tenant:

(1) Requests, in writing to be removed from the CRP contract;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the contract period and the Administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the CRP contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to the provisions in paragraph (b) of this section, tenants shall maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with provisions under applicable State law, may be removed from a contract by CCC. CCC shall assume the tenancy is being maintained unless notified otherwise by a CRP participant specified in the applicable contract.

§ 1410.57 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1410.58 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1410.59 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant or person seeking participation may appeal or request reconsideration of an adverse determination rendered with regard to such participation in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS concerning land classification, erosion rates, water quality ratings or other technical determinations may be appealed in accordance with procedures established under part 614 of this title or otherwise established by NRCS.

§ 1410.60 Scheme or device.

(a) If it is determined by CCC that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such person during the applicable period may be required to be refunded with interest thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or annual rental payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the responsibilities under this part shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future, or conditional interest, reversionary interest, or any option, future or present, with respect to such land, and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest shall be considered a scheme or device under this section.

§ 1410.61 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly

filed a false claim, such participant shall be ineligible for payments under this part with respect to the program year in which the false information or claim was filed and the contract may be terminated in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld. The remedies provided for in this section shall be in addition to any and all other remedies, criminal and/or civil that may apply.

§ 1410.62 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payment due under this part shall be paid to the participant's successor in accordance with the provisions of part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly-erodible land and wetland conservation and payments that otherwise could be made under this part may be withheld to the extent provided for in part 12 of this title.

(c) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law; provided further the Deputy Administrator may add to the contract such additional terms as needed to enforce these regulations which shall be binding on the parties and may be enforced to the same degree as provisions of these regulations.

(d) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of CRP acreage due to foreclosure and the new owner chooses not to continue the contract in accordance with § 1410.51, refunds shall not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

(e) Crop insurance purchase requirements in part 1405 of this chapter apply to contracts executed in accordance with this part.

(f) Land enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, may be removed from such classification upon a determination by the county committee that such land no longer meets the conditions identified in part 718 of this title.

(g) Research projects may be submitted by the State committee and authorized by the Deputy Administrator to further the purposes of CRP. The research projects must include objectives that are consistent with this part, provide economic and environmental information not adversely affect local agricultural markets, and be conducted and monitored by a bona fide research entity.

(h) CCC may enter into other agreements, as approved by the Deputy Administrator, to use the CRP to meet authorized wetland mitigation banking pilot projects.

§ 1410.63 Permissive uses.

Unless otherwise specified by the Deputy Administrator, no crops of any kind may be planted or harvested from designated CRP acreage during the contract period.

§ 1410.64 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under provisions 44 U.S.C. Chapter 35 and OMB number 0560–0125 has been assigned.

PART 1411—OILSEEDS PROGRAM

Subpart A—General Provisions

Sec.

1411.101 Applicability.
1411.102 Administration.
1411.103 Definitions.
1411.104 Misinformation and misaction.

1411.105 Appeals.

Subpart B—Eligibility Determinations

1411.201 Eligible producers.
1411.202 Violations, misrepresentation, or scheme or device.
1411.203 Payment amount.
1411.204 Payment acreage.
1411.205 Payment yield.

Subpart C—Application for Payment

1411.301 Signup period.
1411.302 Submitting application.
1411.303 Late-filed acreage reports.

Subpart D—Miscellaneous

1411.401 Limitation of payments.
1411.402 Offsets and assignments; powers of attorney.

AUTHORITY: Sec. 202, Pub. L. 106–224.

SOURCE: 65 FR 36561, June 8, 2000, unless otherwise noted.

Subpart A—General Provisions

§ 1411.101 Applicability.

This part implements the oilseed provisions enacted in section 202 of the Agricultural Risk Protection Act of 2000 (Public Law 106–224), which provides funds to allow for payments to producers who planted eligible oilseeds in 2000 and who meet other conditions of eligibility.

[65 FR 65714, Nov. 2, 2000]

§ 1411.102 Administration.

(a) This part shall be administered by CCC through the Farm Service Agency Deputy Administrator for Farm Programs under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county committees of the Farm Service Agency of the U.S. Department of Agriculture.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this section to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. The Deputy Administrator may waive or modify deadlines or other program requirements of this part to the extent that such a waiver or modification is otherwise permitted by law and is determined to be appropriate on the ground that it serves the goals of the program or other goals, and does not adversely affect the operation of the program.

§ 1411.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the 2000 Oilseeds Program, and shall be used for Oilseeds Program purposes only. Although the definitions contained in parts 718 and 1412 of this title also apply, to the extent that the definitions in this section differ from the definitions in parts 718 and 1412 of this title, the definitions in this section apply rather than the definitions in parts 718 and 1412 of this title.

Actual yield means an oilseed yield certified by the producer on CCC–780, and if subject to spot check, documented by acceptable production evidence provided by the producer for all the producer's planted acreage of the oilseed for the year in which the yield is proven. If subject to a certified yield spot check, the producer must document an actual yield on form FSA–658 or present RMA documentation indicating actual yields for all of the producer's planted acreage of the oilseed for the year in which the yield is proven.

Control county means the county that for FSA administrative purposes will

be considered to be controlling for purposes of making payment determinations with respect to particular applicants under the program provided for in this part.

County average soybean yield means an average yield approved by DAFP using an Olympic average of the county's average soybean yield for each of the crop years 1995 through 1999 as determined by the State committee. To the extent such data is available, data from NASS shall be used.

DAFP means the Deputy Administrator for Farm Programs, FSA.

Deputy Administrator means DAFP.

Eligible oilseed means one of the following kinds of oilseeds: soybeans, safflower seed, canola, rapeseed, mustard seed, sunflower seed (oil and confectionary), flaxseed, crambe, and sesame.

Established producer means a producer who planted an oilseed for the 2000 crop year, and shared in the production of that specific oilseed in 1997, 1998, or 1999.

National average oilseed yield means the Olympic average yield for an eligible oilseed using the National average yields for the oilseed for the years 1995 through 1999. Such yields shall be considered valid only if approved by DAFP.

New producer means a producer who planted an eligible oilseed for crop year 2000, but did not plant or share in the production of that oilseed in 1997, 1998, or 1999. A producer may be a new producer of one eligible oilseed, while being an established producer for another oilseed.

Oilseed Program Application means form CCC–780.

Olympic average yield means the average yield for the stated period, after dropping the highest and lowest yields of that period.

RMA means the Risk Management Agency of the United States Department of Agriculture.

Sunflower seed acreage means the total acreage planted to sunflower seed on the farm in the applicable crop year without regard to the type of market to which the sunflower seed will be committed, oil or confectionary use.

[65 FR 36561, June 8, 2000, as amended at 65 FR 65714, Nov. 2, 2000]

§ 1411.104 Misinformation and misaction.

The provisions of § 718.8 of this title are applicable to this part, with respect to performance based upon advice or action of county or State committees.

§ 1411.105 Appeals.

A producer may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart B—Eligibility Determinations

§ 1411.201 Eligible producers.

(a) Section 202 of Public Law 106–224 authorizes the Secretary to make payments to a producer who planted an eligible oilseed in 2000. Accordingly, producers of the 2000 crop of oilseeds identified in § 1411.103 are eligible to receive 2000 Oilseeds Program benefits, providing the producer meets the requirements of this part, and is in compliance with part 12 of this title regarding the conservation and protection of highly erodible lands and wetlands, and § 718.11 of this title regarding denials of program benefits for activities relating to the use of controlled substances.

(b) Eligibility determinations made under this part will be made for each producer separately for each specific eligible oilseed planted by that producer in 2000. A producer is not eligible for payment with respect to an oilseed that the producer did not plant in 2000 regardless of whether the producer did or did not plant that oilseed in 1997, 1998, or 1999.

[65 FR 65715, Nov. 2, 2000]

§ 1411.202 Violations, misrepresentation, or scheme or device.

Any person who is determined to have intentionally misrepresented any fact affecting a program determination made in accordance with this part shall not be entitled to oilseed payments under this part and must refund all payments, plus interest determined in accordance with part 1403 of this chapter (relating to debt settlement polices and procedures).

§ 1411.203 Payment amount.

Subject to the availability of funds, eligible persons can receive a payment under this part. The payment amount shall be equal to the payment rate established under this part multiplied by the producer's payment acreage multiplied, in turn, by the producer's payment yield. The payment rate shall be determined by DAFP after the level of program participation is known with sufficient clarity to allow for the calculation of the amount of payment that can be made, by unit of production, within the limits of the available funds. To the extent practicable, separate payment rates may be established for separate eligible oilseeds. Payments can be made only with respect to the production of eligible oilseeds.

§ 1411.204 Payment acreage.

(a) The oilseed payment acreage for an established producer shall, for a particular oilseed, be the higher of the three acreage amounts determined by calculating, for the 1997, 1998, and 1999 crops separately, the acreage determined to be equal to the producer's acreage for that oilseed at all locations for that crop year, adjusted to reflect interests that are only partial interests in such acreage.

(b) The payment acreage for a new producer of an eligible oilseed will be the producer's acreage for that oilseed for the 2000 crop at all locations, adjusted to reflect interests that are only partial interests in such acreage.

(c) Acreage not planted to an oilseed crop because of weather, or because of crop rotation practices or other management decisions, or because of any other reason, shall not be treated as qualifying production for determining a person's general eligibility for payment, a person's payment acreage, or for any other reason under this part.

[65 FR 36561, June 8, 2000, as amended at 65 FR 65715, Nov. 2, 2000]

§ 1411.205 Payment yield.

(a) For purposes of making yield determinations, under this part and for purposes of this section in particular, a producer's ''applicable average yield'' shall be, with respect to soybeans, the county average soybean yield. In the case of other oilseeds, the ''applicable average yield'' shall, for all persons qualifying for payment, be the national average oilseed yield for that oilseed. National and county average yields may be announced in advance of signup by DAFP.

(b) A new producer's payment yield with respect to a particular eligible oilseed shall be the higher of the:

(1) Applicable average yield for that oilseed or

(2) Producer's actual yield for the 2000 crop year.

(c) For established producers, the producer's payment yield for a particular oilseed shall be the higher of:

(1) Applicable average yield; or

(2) The highest for the 1997, 1998, and 1999 crops of the producer's actual yield respectively for those crop years for all acres of the oilseed planted by the producer.

(d) In making determinations under paragraph (c) of this section for established producers, the choice of a crop year history will not be limited to the same history year chosen to set the producer's payment acres.

(e) Where actual yields are used for purposes of establishing the producer's payment yields, the producer, if subject to a yield spot check or otherwise asked to do so, must document those actual yields using form FSA–658 and must establish those yields to the satisfaction of the county committee.

(f) In making yield determinations, the producer's yields and payments may be adjusted by DAFP and the county and state committees, as necessary and practicable to reflect instances in which the producer has different yields at different locations and to reflect partial interests that the producer may have in some acreages.

[65 FR 36561, June 8, 2000, as amended at 65 FR 65715, Nov. 2, 2000]

Subpart C—Application for Payment

§ 1411.301 Signup period.

A signup period shall be announced by the Secretary. Late-filed applications shall not be accepted so that DAFP may establish, to the extent practicable, a final payment rate that

will limit total payments to not more than the allocated amount, which shall be, unless determined otherwise by DAFP, $500 million minus such administrative expenses as can be deducted by law and minus such reserve as may be determined needed to resolve disputes and problematic claims.

[65 FR 36561, June 8, 2000, as amended at 65 FR 65715, Nov. 2, 2000]

§ 1411.302 Submitting application.

(a) Producers shall properly complete, sign and file the application Form CCC–780, and submit the application to the Farm Service Agency during the signup period.

(b) A separate CCC–780 is required for each producer.

(c) For a producer to be considered to have properly filed the application, such applications must be filed by the producer in the FSA county office established as the control county for that producer at the time of application.

§ 1411.303 Late-filed acreage reports.

Late-filed acreage reports may be submitted for purposes of the Oilseed Program operated under this part pursuant to Public Law 106-224 no later than the last day of the signup period announced in accordance with § 1411.301, or as determined by DAFP, provided that the producer shall submit sufficient documentation to verify the acreage to the satisfaction of the county committee.

[65 FR 36561, June 8, 2000, as amended at 65 FR 65715, Nov. 2, 2000]

Subpart D—Miscellaneous

§ 1411.401 Limitation of payments.

(a) No more than the allotted funds may be used for payments under this part. However, no ''per-person'' limit on payments shall apply nor shall there be a gross revenue test as a condition of payment for a person or entity.

(b) No person shall receive a payment under this part except upon a properly completed application properly submitted to the Farm Service Agency during the signup period announced by the Secretary.

§ 1411.402 Offsets and assignments; powers of attorney.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(c) In those instances in which, prior to the issuance of this part, a producer has signed a power of attorney on an approved form FSA–211 for a person or entity indicating that such power shall extend to ''all above programs'', without limitation, such power will be considered to extend to this program unless by November 16, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

[65 FR 36561, June 8, 2000, as amended at 65 FR 65715, Nov. 2, 2000]

PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON

Subpart A—General Provisions

Sec.
1412.101 Applicability.
1412.102 Administration.
1412.103 Definitions.
1412.104 Performance based upon advice or action of county or State committee.
1412.105 Appeals.

Subpart B—Production Flexibility Contract Terms and Enrollment Provisions

1412.201 Production flexibility contract.
1412.202 Eligible producers.
1412.203 Notification of eligible contract acreage.
1412.204 Reconstitutions.

1412.205 Reducing contract acreage.
1412.206 Planting flexibility.
1412.207 Succession-in-interest to a production flexibility contract.

Subpart C—Financial Considerations Including Sharing Production Flexibility Payments

1412.301 Limitation of production flexibility contract payments.
1412.302 Contract payment provisions.
1412.303 Sharing of contract payments.
1412.304 Provisions relating to tenants and sharecroppers.

Subpart D—Contract Violations and Diminution of Payments

1412.401 Contract violations.
1412.402 Violations of highly erodible land and wetland conservation provisions.
1412.403 Violations regarding controlled substances.
1412.404 Contract liability.
1412.405 Misrepresentation and scheme or device.
1412.406 Offsets and assignments.
1412.407 Certification.

Subpart E—Production Flexibility and Conservation Reserve Programs

1412.501 Timing for enrollment and termination of production flexibility of contracts.

AUTHORITY: 7 U.S.C. 7201 *et seq.*; 15 U.S.C. 714b, 714c; Sec. 734, Pub. L. 105–86; Pub. L. 105–228; Sec. 727, Pub. L. 105–277; Secs. 727, 811, Pub. L. 106–78, 113 Stat. 1181.

SOURCE: 61 FR 37575, July 18, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 1412.101 Applicability.

The Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) provides producers on farms with 1996 wheat, corn, barley, grain sorghum, oats, upland cotton and rice crop acreage bases the opportunity to enter into Production Flexibility Contracts with the Commodity Credit Corporation (CCC) for the years 1996 through 2002. Producers who participate in the program must fully comply with the terms of the production flexibility contracts and this part, and in return will receive production flexibility payments.

§ 1412.102 Administration.

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and shall be carried out by State and county Farm Service Agency (FSA) committees (herein called State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Executive Vice President (Administrator, FSA), or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, except statutory deadlines, and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(f) A representative of CCC may execute a form CCC–478, ''1996 through 2002 Production Flexibility Contract'' only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, is null and void.

§ 1412.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Production Flexibility Program. The terms defined in

parts 718 of this title and 1400 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Annual payment amount is the amount to be paid under a contract in effect for each fiscal year with respect to a contract commodity and equals the product of:

(1) 85 percent of the enrolled contract acreage multiplied by

(2) The payment yield multiplied by

(3) The payment rate except that the total of such payments shall not exceed $40,000 per person in accordance with part 1400 of this chapter.

Contract means forms CCC–478 and CCC–478 Appendix.

Contract acreage means a quantity of acres enrolled in a contract.

Contract commodity means wheat, corn, grain sorghum, barley, oats, upland cotton, and rice.

Contract payment means a payment made under this part pursuant to a production flexibility contract.

Corn means field corn or sterile high-sugar corn. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are not corn.

Dry peas means Austrian, wrinkled seed, green, yellow, and Umatilla.

Eligible acreage means the crop acreage base that would have been established for a contract commodity in accordance with regulations in effect on January 1, 1996, at part 1413 of this chapter. If a crop has a designated crop-rotation crop acreage base for 1995, the 1996 crop acreage base established for such crop is determined by averaging planted and considered planted acreages determined in accordance with part 1413 of this chapter as it was in effect on January 1, 1996, taking into consideration the number of years in the most recent rotation cycle. The sum of the crop acreage bases for a farm cannot exceed the cropland for the farm, less cropland enrolled in the Conservation Reserve Program in accordance with parts 704 and 1410 of this title, except to the extent that such excess is due to an established practice of double cropping on the farm in accordance with regulations in effect as of January 1, 1996, at part 1413 of this chapter.

Grain sorghum means grain sorghum of a feed grain or dual purpose variety (including any cross that, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is not considered a grain sorghum.

Oilseeds means acreages of soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, or, if designated by CCC, other oilseeds, planted for harvest as seed, or volunteer acreages of such crops from which the seed is harvested.

Owner means an owner as defined in part 718 of this title and, only for purposes of enrolling a farm in the program authorized by this part or taking any subsequent action to maintain the eligibility of the farm, any agency of the Federal Government; however, such agency shall not be eligible to receive any payment made pursuant to such contract.

Payment rate means the annual payment rate determined and announced by CCC.

Payment yield means the payment yield established for the crop of a contract commodity for the farm in accordance with the regulations in effect on January 1, 1996, at part 1413 of this chapter. CCC shall adjust the payment yield to reflect the additional payments made in accordance with § 1413.15 of such regulations.

Rice means rice excluding sweet, glutinous, or candy rice such as Mochi Gomi.

Upland cotton means planted and stub cotton that is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate. For program purposes, brown lint cotton is considered upland cotton.

§ 1412.104 Performance based upon advice or action of county or State committee.

The provisions of § 718.8 of this title are applicable to this part.

§ 1412.105 Appeals.

A producer may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart B—Production Flexibility Contract Terms and Enrollment Provisions

§ 1412.201 Production flexibility contract.

(a) CCC shall offer to enter into a 7-year contract with an eligible producer on a farm having eligible acreage.

(b) A transfer (or change) in the interest of an owner or producer subject to a contract in the contract acreage covered by the contract shall result in the termination of the contract with respect to the acreage, unless the transferee or owner of the acreage agrees to assume all obligations under the contract. The termination shall be effective on the date of the transfer or change.

(c) All producers sharing in the contract payments on a farm whose payment shares have not been designated for a fiscal year must sign the contract designating payment shares and provide supporting documentation as specified in parts 12, 1400, and 1412 of this title no later than August 1 of the fiscal year to be eligible to earn a contract payment for that fiscal year. If all producers have not signed the contract by August 1, no producers on the contract will be eligible for a payment for that farm for that fiscal year. Notwithstanding the August 1 deadline, in the event a farm reconstitution is completed in accordance with part 718 of this title, all producers must sign the contract and provide supporting documentation as specified in parts 12, 1400 and 1412 of this title within 30 days after written notification by the county committee indicating the reconstitution is completed. If all producers have not signed the contract within 30 days, no producers on the contract will be eligible for a payment for that farm for that fiscal year.

[61 FR 37575, July 18, 1996, as amended at 62 FR 55152, Oct. 23, 1997; 65 FR 7953, Feb. 16, 2000]

§ 1412.202 Eligible producers.

Producers eligible to enter into a contract are:

(a) An owner of a farm who assumes all or a part of the risk of producing a crop;

(b) A producer (other than an owner) on a farm with a share-rent lease for such farm, regardless of the length of the lease, if the owner enters into the same contract;

(c) A producer (other than an owner) on an eligible farm who rents such farm under a lease expiring on or after September 30, 2002, in which case the owner is not required to enter into the contract;

(d) A producer (other than an owner) on an eligible farm who cash rents such farm under a lease expiring before September 30, 2002. The owner of such farm may also enter into the same contract. If the producer elects to enroll less than 100 percent of the crop acreage bases in the contract, the consent of the owner is required;

(e) An owner of an eligible farm who cash rents such farm and the lease term expires before September 30, 2002, if the tenant declines to enter into a contract. In the case of an owner covered by this paragraph, contract payments shall not begin under a contract until the lease held by the tenant ends; and

(f) An owner or producer described in paragraphs (a) through (e) regardless of whether the owner or producer purchased catastrophic risk protection in accordance with part 1405 of this chapter.

§ 1412.203 Notification of eligible contract acreage.

The owner, and operator and all producers on a farm shall be notified in writing of the number of acres eligible for enrollment in a contract.

§ 1412.204 Reconstitutions.

Farms shall be reconstituted in accordance with part 718 of this title.

§ 1412.205 Reducing contract acreage.

(a) A permanent reduction of all or a portion of a farm's contract acreage or eligible contract acreage shall be allowed at the written request of the

owner to the county committee on Form CCC–505.

(b) If the producers convert contract acreage to a non-agricultural commercial or industrial use, the contract acreage shall be reduced accordingly.

§ 1412.206 Planting flexibility.

(a) For the 1996 through 2002 crop years, any crop may be planted on contract acreage on a farm, except as limited elsewhere in this section. For fiscal years 1998 through 2002, for each contract acre on which a producer plants wild rice, 1 acre will not be used in determining the contract payment. Any crop may be planted on cropland in excess of the contract acreage.

(b) Contract acreage may be hayed or grazed at any time.

(c) Planting fruits and vegetables (except lentils, mung beans, and dry peas), is prohibited on contract acreage, except:

(1) A producer may double crop fruits or vegetables with a contract commodity in any region described in paragraph (d) of this section, in which case contract payments will not be reduced. Double cropping for purposes of this section means planting for harvest fruits or vegetables in cycle on the same acres with a contract commodity planted for grain or lint in a 12 month period under weather conditions normal for the region and being able to repeat the same cycle in the following 12 month period;

(2) On a farm that the county committee determines has a history of planting fruits or vegetables, in which case contract payments shall be reduced in accordance with paragraph (e) of this section;

(3) By a producer that the county committee determines a history of fruit or vegetables as the simple average of the sum of a specific fruit or vegetable planted for harvest by the producer during the years 1991 through 1995, excluding any year in which a fruit or vegetable was not planted, in which case contract payments shall be reduced in accordance with paragraph (e); or

(4) On a farm with a 1995 rotation designation crop acreage base established in accordance with part 1413 of this title as in effect on January 1, 1996, and the producers on the farm planted fruits or vegetables as a part of the rotation, in which case there will be no reduction in contract payments if the acreage of fruits and vegetables continue to be planted in the same rotation cycle with contract commodities, the acreage of fruits and vegetables is not increased, and an annual acreage report is filed for the farm.

(d) For purposes of this part, the following counties have been determined to be regions having a history of doublecropping contract commodities with fruits or vegetables. State committees have established the following counties as regions within their respective States:

ALABAMA

Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

ALASKA

None.

ARKANSAS

Ashley, Benton, Clay, Conway, Crawford, Cross, Drew, Franklin, Independence, Jackson, Lawrence, Lee, Lincoln, Little River, Logan, Miller, Perry, Poinsett, Pope, Prairie, Pulaski, Sebastian, and Woodruff.

ARIZONA

Cochise, Graham, Greenlee, LaPaz, Maricopa, Pima, Pinal, and Yuma.

CALIFORNIA

Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

CARIBBEAN OFFICE

None.

CONNECTICUT

None.

COLORADO

None.

DELAWARE

Kent, New Castle, and Sussex.

FLORIDA

All counties.

GEORGIA

Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brooks, Bryan, Bulloch, Burke, Calhoun, Candler, Catoosa, Chatham, Clay, Clinch, Coffee, Colquitt, Columbia, Cook, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Effingham, Emanuel, Evans, Floyd, Forsyth, Franklin, Glascock, Grady, Hart, Houston, Irwin, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Lauren, Lee, Liberty, Long, Lowndes, McDuffie, Macon, Miller, Mitchell, Monroe, Montgomery, Morgan, Peach, Pierce, Pike, Pulaski, Putnam, Randolph, Richmond, Schley, Screven, Seminole, Stephens, Sumter, Tattnall, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Turner, Twiggs, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, Wilkinson, and Worth.

HAWAII

None (no CAB's).

IDAHO

None.

ILLINOIS

Calhoun, Clark, Crawford, Edgar, Effingham, Gallatin, Iroquois, Kankakee, Lawrence, Madison, Marion, Mason, Monroe, St. Clair, Union, Vermilion and White.

INDIANA

Allen, Bartholemew, Gibson, Hamilton, Knox, LaGrange, Lake, Madison, Miami, Posey, Sullivan, Vandenberg, and Warrick.

IOWA

Louisa.

KANSAS

None.

KENTUCKY

Clinton and Wayne.

LOUISIANA

Avoyelles, Franklin, Grant, Rapides, and Morehouse.

MAINE

None.

MARYLAND

Baltimore, Caroline, Carroll, Dorchester, Kent, Queen Annes, Somerset, Talbot, Wicomico, and Worcester.

MASSACHUSETTS

None.

MICHIGAN

None.

MINNESOTA

None.

MISSISSIPPI

Calhoun, Carroll, Covington, Jefferson Davis, Lowndes, Marshall, Monroe, Montgomery, and Prentiss.

MISSOURI

Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Ripley, Scott, and Stoddard.

MONTANA

None.

NEBRASKA

None.

NEVADA

Clark.

NEW JERSEY

Burlington, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Salem.

NEW HAMPSHIRE

None.

NEW MEXICO

Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

NEW YORK

Orange and Suffolk.

NORTH CAROLINA

Beaufort, Bladen, Brunswick, Cabarrus, Camden, Carteret, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Edgecombe, Franklin, Granville, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenburg, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Tyrell, Union, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, and Yadkin.

NORTH DAKOTA

None.

OHIO

Auglaize, Brown, Henry, Logan, Morgan, Muskingham, and Wood.

OKLAHOMA

Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, LeFlore, Logan, McClain, McIntosh, Major, Marshall, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pottawatomie, Roger Mills, Rogers, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washita, Woods, and Woodward.

OREGON

Benton, Linn, Morrow, and Umatilla.

PENNSYLVANIA

Adams, Allegheny, Beaver, Bucks, Centre, Chester, Columbia, Cumberland, Delaware, Franklin, Lancaster, Luzerne, Mifflin, Montgomery, Montour, Northumberland, Schuylkill, Snyder, Union, Wyoming, and York.

RHODE ISLAND

None.

SOUTH CAROLINA

All counties.

SOUTH DAKOTA

None.

TENNESSEE

Bledsoe, Cannon, Carroll, Claiborne, Coffee, Crockett, Dyer, Greene, Hardeman, Haywood, Jefferson, Knox, Lake, Lauderdale, Lincoln, Madison, Meigs, McMinn, Pickett, Rhea, Robertson, and Union.

TEXAS

Anderson, Armstrong, Atascosa, Bailey, Baylor, Briscoe, Brooks, Cameron, Castro, Cherokee, Cochran, Collingsworth, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dimmit, Duval, Floyd, Foard, Frio, Gaines, Hale, Hall, Hartley, Haskell, Hidalgo, Jim Hogg, Jim Wells, Kinney, Kleberg, Knox, Lamb, Lubbock, Lynn, Maverick, Medina, Moore, Motley, Nacogdoches, Oldham, Panola, Parmer, Pecos, Randall, Rusk, San Patricio, Starr, Swisher, Terry, Uvalde, Webb, Wilbarger, Willacy, Yoakum, Zapata, and Zavala.

UTAH

Davis and Weber.

VERMONT

None.

VIRGINIA

Accomack, Augusta, Botetourt, Brunswick, Campbell, Charlotte, Chesapeake, Cumberland, Dinwiddie, Halifax, Hanover, Isle of Wight, King and Queen, King William, Lunenburg, Mecklenburg, Middlesex, Nelson, New Kent, Northampton, Nottoway, Page, Pittsylvania, Powhatan, Prince George, Richmond, Rockbridge, Rockingham, Shenandoah, Southampton, Stafford, Suffolk, Sussex, Virginia Beach, and Westmoreland.

WASHINGTON

Adams, Benton, Clark, Cowlitz, Franklin, Grant, Klickitat, Lewis, Skagit, and Yakima.

WEST VIRGINIA

Mason and Putnam.

WISCONSIN

Brown, Calumet, Chippewa, Columbia, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Kenosha, Marquette, Racine, Richland, Rock, St. Croix, Sauk, Walworth, Waushara, and Winnebago.

WYOMING

None.

(e) For each acre a producer plants to fruits or vegetables on contract acreage under paragraphs (c)(2) or (3) of this section, 1 acre will not be used in determining the contract payment. The calculation for this reduction is based on the contract crop with the lowest payment amount per acre. Reductions will be prorated among all producers based on each producer's share of the total payment for the farm. Such producers may adjust the reduction in payments as they agree upon.

(f) Fruits and vegetables include but are not limited to all nuts except peanuts, certain fruit-bearing trees and: acerola (barbados cherry), antidesma, apples, apricots, aragula, artichokes, asparagus, atemoya, (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, faba, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok choy, boysenberries, breadfruit, broccoflower, broccolocavalo, broccoli, brussel sprouts, cabbage, cai lang, caimito, calabaza, carambola (star fruit), calaboose, carob, carrots, cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chickpeas/

garbanzo beans, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, cressie greens, crenshaw melons, cucumbers, currants, cushaw, daikon, dasheen, dates, dry edible beans, dunga, eggplant, elderberries elut, endive, escarole, etou, feijoas, figs, gai lien, gailon, galanga, genip, gooseberries, grapefruit, grapes, guambana, guavas, guy choy, chinese mustard, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes, lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mongosteen, mar bub, melongene, mesple, mizuna, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radiochio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recao, rhubarb, rutabaga, santa claus melon, salsify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chai, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, and yam.

(g) Fruits or vegetables planted on contract acreage for green manure, haying, or grazing are not considered as planted to fruits or vegetables, but producers planting fruits and vegetables for such purposes shall pay a fee to cover the cost of a farm visit, in accordance with part 718 of this title, to verify that the crop has not been harvested.

[61 FR 37575, July 18, 1996; 61 FR 49049, 49050, Sept. 18, 1996, as amended at 65 FR 7953, Feb. 16, 2000]

§ 1412.207 Succession-in-interest to a production flexibility contract.

(a) A person may succeed to the contract if there has been a change in the operation of a farm, such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number of partners; or

(3) A foreclosure, bankruptcy, or involuntary loss of the farm after enrollment in a production flexibility contract.

(b) A succession in interest to the contract is not permitted if CCC determines that the change results in a violation of the landlord-tenant provisions set forth at § 1412.304, or otherwise defeats the purpose of the program.

(c) If a producer who is entitled to a contract payment dies, becomes incompetent, or is otherwise unable to receive the contract payment, the CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner must inform the county committee of changes in interest not later than:

(1) August 1 of the fiscal year in which the change occurs if producers on the contract acreage remain the same, but payment shares change; or

(2) August 1 of the fiscal year in which the change occurs, if a new producer is being added to the contract.

(e) In any case in which payment has previously been made to a predecessor, such payment shall not be paid to the successor. If the predecessor refunds an advance contract payment, such producer shall not be assessed interest in accordance with part 1403 of this chapter.

[61 FR 37575, July 18, 1996; 61 FR 49050, Sept. 18, 1996, as amended at 62 FR 55152, Oct. 23, 1997; 63 FR 31103, June 8, 1998]

Subpart C—Financial Considerations Including Sharing Production Flexibility Payments

§ 1412.301 Limitation of production flexibility contract payments.

The sum total of annual contract payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

§ 1412.302 Contract payment provisions.

(a) A producer may request 50 percent of each fiscal year's contract payment as an advance payment.

(b) At the option of the producer, for fiscal year 1997 and each subsequent fiscal year, 50 percent of the annual contract payment shall be paid on December 15 or January 15, as requested by the producer. To receive the advance payment the producers on the farm must be in compliance with all requirements of the contract at the time of the advance payment. For fiscal year 1998 and each subsequent fiscal year, all producers sharing in the contract payment on the farm must no later than 15 days prior to the final date to issue the advance payment, sign the contract designating payment shares and provide supporting documentation as specified in parts 12, 1400, and 1405 of this title, if applicable; and request the advance payment. If all producers on the farm have not signed the contract designating payment shares according to this paragraph, then no producers will be eligible for a payment for that farm for that fiscal year.

(c) A final contract payment shall be made not later than September 30 of each of the fiscal years 1996 through 2002.

(d) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the production flexibility payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof shall not become available for any other producer; and

(2) The producer shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter shall be applicable to all unearned payments.

(e) Notwithstanding any other provision of this section, 1999 fiscal year production flexibility contract payments may be made at any time as may be determined to be permitted by the Emergency Farm Financial Relief Act, Public Law 105–228.

[61 FR 37575, July 18, 1996, as amended at 62 FR 55152, Oct. 23, 1997; 63 FR 31104, June 8, 1998; 65 FR 7954, Feb. 16, 2000]

§ 1412.303 Sharing of contract payments.

(a) Each eligible producer on a farm shall be given the opportunity to enroll in a contract and receive contract payments determined fair and equitable as agreed to by the producers on the farm and approved by the county committee.

(1) Producers must provide a copy of their written lease to the county committee, and, in the absence of a written lease, must provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease.

(2) A lease will be considered a cash lease if the lease provides for only a guaranteed sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(3) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement shall be considered to be a share lease.

(4) Beginning on October 1, 1998, for years in which payment shares had not been designated prior to October 23, 1997, a producer's lease, including a lease which provides for the greater of a guaranteed amount or share of the crop or crop proceeds, shall be considered a share lease if the lease provides for both:

(i) A guaranteed amount such as a fixed dollar amount or quantity; and

(ii) A share of the crop proceeds.

(5) If the lease is a cash lease, the landlord is not eligible for a contract payment.

(6) A lease that the county committee determined to be a cash lease under § 1412.303 as contained in the 7 CFR, parts 1200 to 1499, edition revised as of January 1, 1997, will be considered a cash lease for the years in which payment shares were designated if, prior to October 23, 1997:

(i) The designation of shares was executed; and

(ii) The county committee was provided a copy of the lease applicable for the designated years.

(b) When contract acreage is leased on a share basis, neither the landlord nor the tenant shall receive 100 percent of the contract payment for the farm.

(1) A landowner may receive up to 100 percent of the contract payment if no lease exists with respect to the contract acreage. The leasing of grazing or haying privileges is not considered cash leasing.

(2) [Reserved]

(c) The county committee shall approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landowners, tenants and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) The county committee determines that the interests of tenants and sharecroppers are being protected; and

(3) That the division of payments is not done in a manner to circumvent the provisions of part 1400 of this chapter.

[61 FR 37575, July 18, 1996, as amended at 62 FR 55152, Oct. 23, 1997; 63 FR 31104, June 8, 1998]

§ 1412.304 Provisions relating to tenants and sharecropper.

(a) Contract payments shall not be made by CCC if:

(1) The landlord or operator has adopted a scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC; or

(2) The landlord terminated a lease in violation of state law as determined by a state court.

(b) Notwithstanding the provisions set forth at § 1412.302(c), if the landowners, tenants and sharecroppers on a farm fail to reach an agreement regarding the division of contract payments for a fiscal year, the county committee shall make the payment at a later date if all persons eligible to receive a share of the contract payment have executed a contract not later than August 1 of the applicable fiscal year and subsequently agree to the division of contract payment.

[61 FR 37575, July 18, 1996, as amended at 62 FR 55152, Oct. 23, 1997; 63 FR 31104, June 8, 1998]

Subpart D—Contract Violations and Diminution in Payments

§ 1412.401 Contract violations.

(a) Except as provided in paragraph (b) of this section, if a producer subject to a contract violates a requirement of the contract specified in §§ 1412.206(c), 1412.402, 1412.403, and 1412.405, the Deputy Administrator shall terminate the contract with respect to the producer on each farm in which the producer has an interest. Upon such termination, the producer shall forfeit all rights to receive future contract payments on each farm in which the producer has an interest and shall refund all contract payments received by the producer during the period of the violation, plus interest with respect to the contract payments as determined in accordance with part 1403 of this chapter.

(b) If the county committee determines that a violation is not serious enough to warrant termination of the contract under paragraph (a) of this section, the county committee may require the producer subject to the contract either, or both of the following:

(1) Refund to CCC that part of the contract payments received by the producer during the period of the violation, plus interest determined in accordance with part 1403 of this chapter; and

(2) If there is a violation of § 1412.206, accept a reduction in the amount of current and future contract payments that is equal to the sum proportionate to the severity of:

(i) Market value of the fruit and vegetables planted on each contract acreage; and

(ii) The contract payment for each such acre.

(c) Producers who do not plant a crop on contract acreage must protect any

such land from weeds and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision by a producer will result in a reduction in the producer's payment for the farm by an amount equal to 3 times the cost of maintenance of the acreage, but not to exceed 50 percent of the payment for the farm for that fiscal year. The second violation of this provision will result in a reduction in the payment for the farm by an amount equal to 3 times the cost of maintenance of the acreage, not to exceed the payment for the farm for that fiscal year.

[61 FR 37575, July 18, 1996; 61 FR 49050, Sept. 18, 1996]

§ 1412.402 Violations of highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title, apply to this part.

§ 1412.403 Violations regarding controlled substances.

The provisions of § 718.11 of this title apply to this part.

[61 FR 37575, July 18, 1996; 61 FR 49050, Sept. 18, 1996]

§ 1412.404 Contract liability.

All producers receiving a share of the contract payment are jointly and severally liable for contract violations and resulting repayments.

§ 1412.405 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

§ 1412.406 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1412.407 Certification.

As a condition of eligibility for contract payments, the operator or owner must timely submit a report of fruit and vegetable acreage in accordance with part 718 of this title. If such operator or owner does not report all of the fruits and vegetables planted on contract acreage, the contract shall be terminated with respect to such farm unless the provisions of § 1412.401(b)(1) and (2) are applicable.

[61 FR 37575, July 18, 1996; 61 FR 49050, Sept. 18, 1996]

Subpart E—Production Flexibility and Conservation Reserve Programs

§ 1412.501 Timing for enrollment and termination of production flexibility contracts.

(a) At the beginning of each fiscal year, the Secretary shall allow an eligible producer on a farm with acreage enrolled in a Conservation Reserve Program contract in accordance with parts 704 or 1410 of this title that terminates after August 1, 1996, to enter into or modify an existing production

flexibility contract if such land otherwise would have been eligible for enrollment under this part as of August 1, 1996.

(b) A production flexibility contract shall begin with the 1996 crop of a contract commodity or in the case of acreage that was enrolled in the Conservation Reserve Program, the date the production flexibility contract was entered into or modified to include the acreage previously subject to the Conservation Reserve Program contract.

(c) All contracts shall terminate on September 30, 2002, unless terminated at an earlier date by mutual consent of all parties.

(d)(1) Subject to the provisions of paragraphs (d)(2) and (3) of this section, land that could not previously have been enrolled in a production flexibility contract because of participation in the Conservation Reserve Contract but which becomes available for enrollment because of the expiration of a Conservation Reserve Program contract may be enrolled in a production flexibility contract.

(2) Land qualifying for a production flexibility contract under paragraph (d)(1) of this section may be enrolled in a production flexibility contract no later than November 30 of the fiscal year following the final fiscal year of the Conservation Reserve Program contract unless the Conservation Reserve Program contract terminated after August 1, 1998, in which case the land shall be enrolled in a production flexibility contract no later than April 1 of the fiscal year following the final fiscal year of the Conservation Reserve Program contract.

(3) In fiscal years 1997 through 2002, if a conservation reserve contract is terminated, and the land that was subject to the conservation reserve contract is enrolled in a production flexibility contract, the owner or producer may elect to receive either the production flexibility contract payment or a prorated Conservation Reserve Program payment for the fiscal year, but not both.

[61 FR 37575, July 18, 1996, as amended at 65 FR 7954, Feb. 16, 2000]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 Through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds, (Canola, Crambe, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

Sec.

1421.1 Applicability.
1421.2 Administration.
1421.3 Definitions.
1421.4 Eligible producers.
1421.5 General eligibility requirements.
1421.6 Maturity dates.
1421.7 Adjustment of basic loan rates.
1421.8 Approved storage.
1421.9 Warehouse receipts.
1421.10 Warehouse charges.
1421.11 Liens.
1421.12 Fees, charges, and interest.
1421.13–1421.14 [Reserved]
1421.15 Loss or damage to the commodity.
1421.16 Personal liability of the producers.
1421.17 Farm-stored commodities.
1421.18 Warehouse-stored loans.
1421.19 Liquidation of loans.
1421.20 Release of the commodity pledged as collateral for a loan.
1421.21 [Reserved]
1421.22 Settlement.
1421.23 Foreclosure.
1421.24 Protein determinations.
1421.25 Loan repayments.
1421.26 Transfer of farm-stored loan to warehouse-stored association loan.
1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.
1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.
1421.29 Loan deficiency payments.
1421.30 Death, incompetency, or disappearance.
1421.31 Recourse loans.
1421.32 Handling payments and collections not exceeding $9.99.

Subpart—Regulations Governing the Wheat and Feed Grain Farmer-Owned Reserve Program for 1990 through 1995 Crops

1421.200 Administration.

Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

1421.5551 General statement and administration.
1421.5552 Basic standards.
1421.5553 Bonding requirements for net worth.
1421.5554 Examination of warehouses.
1421.5555 Exceptions.
1421.5556 Approval of warehouses, requests for reconsideration.
1421.5557 Exemption from requirements.
1421.5558 Contract and application and inspection fees.
1421.5559 OMB control numbers assigned pursuant to Paperwork Reduction Act.

AUTHORITY: 7 U.S.C. 7213–7235, 7237; 15 U.S.C. 714b, 714c; Sec. 813, Pub. L. 106–78, 113 Stat. 1182; Sec. 206, Pub. L. 106–224.

Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 Through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds, (Canola, Crambe, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

SOURCE: 61 FR 37581, July 18, 1996, unless otherwise noted.

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1996 through 2002 crops of barley, corn, grain sorghum, oats, peanuts, rice, wheat, and oilseeds as set forth in § 1421.3. These regulations set forth the terms and conditions under which loans shall be entered into and loan deficiency payments made by the Commodity Credit Corporation (CCC). Additional terms and conditions are set forth in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive loans and loan deficiency payments. All loans made under this subpart are nonrecourse unless as noted in § 1421.31. With respect to warehouse-stored loans for peanuts, loans shall be made in accordance with part 1446 of this chapter.

(b) Basic county loan rates, the schedule of premiums and discounts, and forms that are used in administering loans and loan deficiency payments for a crop of a commodity are available in State and county FSA offices (State and county offices, respectively). The forms for use in connection with the programs in this section shall be prescribed by CCC.

(c)(1) Loans and loan deficiency payments shall be available as provided in this part with regard to barley, corn, grain sorghum, oats, oilseeds, and wheat produced in the United States.

(2) Loans and loan deficiency payments shall be available only with respect to rice produced in the continental United States.

(3) Farm-stored loans shall be available only with respect to farmer stock peanuts, as defined in part 1446 of this chapter, that are produced in the United States and that are also of a type specified in part 729 of this title.

(d) Loans and loan deficiency payments shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(e) Notwithstanding provisions of this subpart and subchapter:

(1) For commodities produced during the 1999 crop year, the $75,000 per person total limitation on all commodities together on the sum of marketing loan gains on loan made under this part and on loan deficiency payments with respect to loans under this part, shall not apply, but, rather, such limit shall be $150,000 per person.

(2) For eligible crops produced in the 1999 crop year, a producer may receive with respect to a commodity, a marketing loan gain in connection with loans made under this part or loan deficiency payments in connection with the administration of loans under this part even though the crop has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the commodity;

(ii) The person seeking the payment is the actual producer of the commodity and had beneficial interest in the commodity at the time of the operative marketing, for commodities to

which paragraph (e)(2)(iii) of this section applies, or the time at which the commodity was redeemed in the case of commodities to which paragraph (e)(2)(iv) of this section applies;

(iii) For those commodities that were previously placed under loan, the payment is made solely as marketing loan gain in which case the rate to be paid will be determined as of the date of the redemption;

(iv) For commodities not covered by paragraph (e)(2)(iii) of this section, the producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date that the producer marketed or lost beneficial interest in the commodity;

(v) Unless otherwise allowed by the Deputy Administrator, the producer marketed the commodity prior to February 16, 2000.

(f) Not withstanding provisions of this subpart and subchapter:

(1) Eligible contract commodities produced during the 2000 crop year on a farm that is not covered under a production flexibility contract, as defined in part 1412 of this chapter, are eligible for a loan deficiency payment to eligible producers in accordance with § 1421.4.

(2) With respect only to contract commodities produced in the 2000 crop year on a farm not covered under a production flexibility contract, a producer may receive with respect to such commodities, a loan deficiency payment in connection with the administration of loans under this part even though the crop has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the commodity;

(ii) The person seeking the payment is the actual producer of the commodity and had beneficial interest in the commodity at the time of the operative marketing;

(iii) The producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date the producer marketed or lost beneficial interest in the commodity;

(iv) Unless otherwise allowed by the Deputy Administrator for Farm Programs, FSA, the commodities were harvested and marketed on or before December 4, 2000.

[61 FR 37581, July 18, 1996, as amended at 65 FR 7954, Feb. 16, 2000; 65 FR 13865, Mar. 15, 2000; 65 FR 65715, Nov. 2, 2000]

§ 1421.2 Administration.

(a) The loan and loan deficiency payment program that is applicable to a crop of a commodity shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA) and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee or the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the loan and loan deficiency payment program.

(f) A representative of CCC may execute loans and loan deficiency payment applications and related documents

only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title and parts 1412, 1425, and 1427 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Basic loan rate means the loan rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

High moisture commodities means corn and grain sorghum normally harvested and intended to be stored or marketed in a high moisture condition.

Loan deficiency quantity means the eligible quantity that was certified by the producer as eligible to be pledged as collateral for a loan, for which the producer elected to forgo obtaining the loan.

Loan quantity means the quantity on which the loan was disbursed shown on the note and security agreement.

Oilseeds means any crop of soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

§ 1421.4 Eligible producers.

(a) An eligible producer of a crop of a commodity shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity) that:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12, 718, 1405, 1412, and 1446 of this title.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. Loan or loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans or loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d)(1) Two or more producers may obtain a single joint loan with respect to commodities that are stored in the same farm storage facility. Two or more producers may obtain individual loans with respect to their share of the commodity that is stored commingled in a farm storage facility with commodities owned by other producers if such other producers execute Form

CCC–665 that provides that such producers shall obtain the permission of a representative of the county committee before removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities that have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities in accordance with § 1421.17.

(2) Two or more producers may obtain a single joint loan with respect to commodities that are stored in an approved warehouse if the warehouse receipt that is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) The county committee may deny a producer a loan on farm-stored commodities if the producer has:

(i) Been convicted of a criminal act;

(ii) Has made a misrepresentation, with respect to acquiring a farm-stored loan or in the maintenance of the commodity pledged as security for a farm-stored loan; or

(iii) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan.

(2) In such cases, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity that would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

(f) Warehouse-stored loans may be made to a warehouse operator who, acting on behalf and with the authorization of a producer, tenders to CCC warehouse receipts issued by such warehouse operator for a commodity produced by such warehouse operator only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

(g) An approved cooperative marketing association (CMA) may obtain a loan on the eligible production of such commodity or loan deficiency payment with respect to such commodity on behalf of the members of the CMA who are eligible to receive loans and loan deficiency payments with respect to a crop of a commodity. For purposes of this subpart and in applicable loan and loan deficiency payment forms, the term producer includes an approved CMA.

(h) With respect to peanuts tendered to CCC for loan, a producer must also meet the provisions of part 1446 of this title. Before obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler with the State FSA office of the State in which the producer's farm is located.

(i)(1) Two or more producers may obtain a single joint loan deficiency payment with respect to commodities that are stored in the same farm storage facility. Two or more producers may obtain individual loan deficiency payments with respect to their share of the commodity that is stored commingled in a farm storage facility with commodities owned by other producers. All producers who store a commodity in a farm storage facility in which commodities for which a loan deficiency payment has been requested shall be liable for any damage incurred by CCC with respect to incorrect certification of such commodities in accordance with § 1421.16.

(2) Two or more producers may obtain a single joint loan deficiency payment with respect to commodities that are stored in an approved or unapproved warehouse if the acceptable

documentation representing an eligible commodity for which a loan deficiency payment is requested is completed jointly for such producers.

(3) Each producer who is a party to a joint loan deficiency payment will be jointly and severally responsible and liable for the breach of the obligations set forth in the loan deficiency payment documents and in the applicable regulations in this subpart.

§ 1421.5 General eligibility requirements.

(a) A producer must, unless otherwise authorized by CCC, request loans and loan deficiency payments at the county office that, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved CMA must, unless otherwise authorized by CCC, request loans and loan deficiency payments at the location designated by CCC. An eligible producer who produces a crop of barley, corn, grain sorghum, oats, rice, or wheat on a farm covered by a production flexibility contract shall be eligible for a loan on any production of that commodity. In the case of oilseeds, any production produced by an eligible producer shall be eligible for a loan. To receive loans or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement or loan deficiency payment application on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: quota peanuts pledged as collateral for a farm-stored loan, barley, canola, flaxseed, oats, rapeseed, and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; or

(4) May 31 of the year following the year in which the following crops are normally harvested: corn, grain sorghum, mustard seed, rice, safflower, soybeans, and sunflower seed.

(b)(1) To be eligible to receive loans or loan deficiency payments, commodities must be tendered to CCC by an eligible producer and must be eligible and in existence when approved by CCC. To be eligible to receive loans, commodities must also be stored in approved storage at the time of disbursement of loan proceeds. The commodity must not have been sold, nor any sales option on such commodity granted, to a buyer under a contract that provides that the buyer may direct the producer to pledge the commodity to CCC as collateral for a loan or to obtain a loan deficiency payment. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. Notwithstanding any other provision of this part, such commodities that contain vomitoxin levels of 5 or less parts per million or contain levels of more than 5 parts per million, may be eligible for a nonrecourse or recourse loan, respectively. Corn containing aflatoxin levels not exceeding 20 parts per billion may be eligible for a nonrecourse loan.

(2) The determination of class, grade, grading factors, milling yields, and other quality factors, including the determination of type, quality and quantity for peanuts:

(i) With respect to barley, canola, corn, flaxseed, grain sorghum, oats, rice, soybeans, sunflower seed for extraction of oil, and wheat, shall be based upon the Official United States Standards for Grain and the Official United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination may be paid by CCC. The grade and grading requirements that are used in administering loans and loan deficiency payments for the commodities in this paragraph are available in State and county offices.

(ii) With respect to a crop of mustard seed, rapeseed, safflower seed, and sunflower seed used for a purpose other than to extract oil, shall be based on quality requirements established and announced by CCC, whether or not such

determinations are made on the basis of an official inspection. The costs of an official quality determination may be paid by CCC. The quality requirements that are used in administering loans and loan deficiency payments for the oilseeds in this paragraph are available in State and county offices.

(iii) With respect to peanuts, shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn, but may not be ground ear corn. If the collateral is ear corn, the producer must:

(i) Before delivery to CCC, shell such corn without cost to CCC; and

(ii) Before removal of the commodity for shelling, have the approval of CCC in accordance with §1421.20. Corn pledged as collateral for a warehouse-stored loan must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage;

(ii) A bushel of corn shall be 56 pounds of shelled corn;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be determined in tons and hundredths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of soybeans shall be 60 pounds of soybeans with no more than 1 percent foreign material;

(vii) A bushel of grain sorghum shall be 56 pounds of grain sorghum free of dockage;

(viii) A bushel of wheat shall be 60 pounds of wheat free of dockage;

(ix) Quantities of farm-stored canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed shall be determined in whole units of 100 pounds of the respective commodity;

(x) A bushel of canola shall be 50 pounds of canola free of dockage;

(xi) A bushel of flaxseed shall be 56 pounds of flaxseed free of dockage;

(xii) A bushel of mustard seed shall be 54 pounds of mustard seed free of dockage;

(xii) A bushel of rapeseed shall be 50 pounds of rapeseed free of dockage;

(xiv) A bushel of safflower seed shall be 40 pounds of safflower seed free of dockage; and

(xv) A bushel of sunflower seed shall be 28 pounds of sunflower seed free of foreign material.

(5) With respect to farm-stored loans and loan deficiency payments, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed.

(c)(1) To be eligible to receive loans or loan deficiency payments, a producer must have the beneficial interest in the commodity that is tendered to CCC for a loan or loan deficiency payment. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, the producer and a former producer whom the producer tendering the commodity to CCC has succeeded had such an interest in the commodity. Commodities obtained by gift or purchase shall not be eligible to be tendered to CCC for loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan or loan deficiency payment shall be eligible to receive loans and loan deficiency payments whether succession to the commodity occurs before or after harvest so long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control, title, and risk of loss in the commodity, including the right to make all decisions regarding the tender of such commodity to CCC for loans or loan deficiency payments, and the producer:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, with respect to such commodity if all other eligibility requirements are met and the option to purchase contains the following provision:

Notwithstanding any other provision of this option to purchase, title, risk of loss,

and beneficial interest in the commodity, as specified in 7 CFR part 1421, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any CCC loan which is secured by such commodity; (2) the date the CCC claims title to such commodity; or (3) such other date as provided in this option

or

(ii) Enters into a contract to sell the commodity if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.

(3) If loans and loan deficiency payments are made available to producers through an approved CMA in accordance with part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the CMA or its member CMA's, except as otherwise provided in this section. Commodities delivered to such a CMA shall not be eligible to receive loans or loan deficiency payments if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter.

(d)(1) A producer may, before the final date for obtaining a loan for a commodity, re-offer as collateral for such a loan any commodity that had been previously pledged as collateral for a loan, except with respect to:

(i) Commodities that have been acquired in accordance with part 1401 of this chapter;

(ii) Commodities that have been redeemed at a rate that is less than the loan rate as determined in accordance with § 1421.25; and

(iii) Commodities for which a payment has been made in accordance with § 1421.29.

(2) The commodity re-offered as security for the subsequent loan shall have the same maturity date as the original loan.

(e) Producers who redeem loan collateral at the lower loan repayment rate in accordance with § 1421.25 or, in lieu of receiving a loan receive a loan deficiency payment in accordance with § 1421.29, shall provide CCC with:

(1) Evidence of production of the collateral such as sales receipts or other written documentation acceptable to CCC; or

(2) The storage location of the collateral that has not been otherwise disposed of and allow CCC access to such collateral; and

(3) Permission to inspect, examine, and make copies of the records and other written data as deemed necessary to verify the eligibility of the producer and commodity.

(f) Producers who redeem loan collateral or receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of production acceptable to CCC before the final loan availability date of the crop year for such commodity following the crop year for which the loan or loan deficiency payment was made. Production evidence includes but is not limited to:

(1) Evidence of sales;

(2) Load summary or assembly sheets;

(3) Warehouse receipts issued by a warehouse that is approved according to § 1421.8(b) or by a warehouse that is not approved; and

(4) Quantities determined by measurement at CCC's discretion.

(g) If the producer fails to provide acceptable evidence of production as required in paragraph (e)(1) of this section, such producer shall be required to repay the market gain or loan deficiency payment and charges, plus interest.

(h) The loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible commodity, in existence, and is in approved storage. If the commodity was not either an eligible commodity, in existence, or in approved storage at the time of disbursement, the total amount disbursed under the loan and charges plus interest shall be refunded promptly by the producer.

(i) CCC shall limit the total loan quantity for a loan disbursement or

loan deficiency quantity for a loan deficiency payment based on a subsequent increase in the quantity of eligible commodity by the final loan availability date to 100 percent of the outstanding quantity of such loan or loan deficiency payment application. A producer may obtain a separate loan or loan deficiency payment before the final loan availability date for the commodity for quantities in excess of 100 percent of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.6 Maturity dates.

(a)(1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities, except peanuts and loan collateral transferred in accordance with § 1421.17(c) and (d), no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 30 days in advance of the accelerated maturity date.

(3) The request for a loan shall not be approved until all producers having an interest in the collateral sign the note and security agreement and CCC approves such note and security agreement.

(b) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount and charges plus interest shall be established. CCC shall:

(1) Inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title; and

(2) If the producer delivers the loan collateral in accordance with § 1421.22 after a claim is established:

(i) Determine the value of the settlement for such collateral in accordance with § 1421.22;

(ii) Waive interest on the loan amount that accrued before the establishment of the claim with respect to the settlement value of the quantity delivered from the date such loan proceeds were disbursed through the loan maturity date. Interest that accrues after the establishment of the claim shall not be waived; and

(iii) Reduce the outstanding claim amount arising from the loan by the amount of the settlement value of the quantity delivered plus the amount of interest that was waived.

§ 1421.7 Adjustment of basic loan rates.

(a) Basic loan rates for a commodity may be established on a State, regional, or county basis and may be adjusted by CCC to reflect quality and location applicable to the commodity and as otherwise provided in this section.

(b) The basic loan rates for the wheat, corn, barley, oats, grain sorghum, rice, peanuts, soybean, canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed crops will be determined by CCC and made available at State and county offices.

(c)(1) With respect to all commodities except peanuts and rice, warehouse-stored loans shall be disbursed at levels based on the basic county loan rate for the county where the commodity is stored, adjusted for the schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to rice, warehouse-stored loans shall be disbursed at levels based on the milling yields times the whole and broken kernel loan rates, adjusted for the schedule of discounts on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(3) With respect to commodities moved from one warehouse to another in accordance with the terms and conditions prescribed by CCC on Form CCC–699, Reconcentration Agreement and Trust Receipt, the loan rate will be

adjusted to reflect the new storage location.

§ 1421.8 Approved storage.

(a) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) that is determined by CCC to be under the control of the producer and to afford safe storage of the commodity pledged as collateral for a loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements.

(b) Approved warehouse storage shall consist of:

(1) A public warehouse for which a CCC storage agreement for the commodity is in effect and that is approved by CCC for price support purposes. Such a warehouse is referred to in this subpart as an approved warehouse. The names of approved warehouses may be obtained from the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205, or from State and county offices.

(2) A warehouse operated by an approved CMA as defined in part 1425 of this chapter.

(c) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1421.29.

§ 1421.9 Warehouse receipts.

(a) Warehouse receipts tendered to CCC with respect to a loan or loan deficiency payment must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity that is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity that is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit. However, warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.20(c).

(c) If the receipt is issued for a commodity that is owned by the warehouse operator either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouse operator on the warehouse operator's commodity is invalid, the warehouse operator may offer the commodity to CCC for loan if such warehouse is licensed and operating under the U.S. Warehouse Act.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse that has a storage agreement with CCC shall indicate that the commodity is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) that properly identifies the warehouse receipt, must be issued in accordance with the Uniform Grain and Rice Storage Agreement or the U.S. Warehouse Act, as applicable, and must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The type of commodity;

(vi) The date the commodity was deposited or received;

(vii) The date to which storage has been paid or the storage start date;

(viii) Whether the commodity was received by rail, truck or barge;

(ix) The amount per bushel, pound, or hundredweight of prepaid in or out charges;

(x) The signature of the warehouse operator or the authorized agent; and

(xi) For warehouses operating under a merged warehouse code agreement (KC–385), the location and county to which the producer delivered the commodity.

(2) In addition to the information specified in paragraph (f)(1) of this section, additional commodity specific requirements shall be determined by CCC and are available at State and county offices and the Kansas City Commodity Office.

(g) If a warehouse receipt indicates that the commodity tendered for loan grades ''infested'' or ''contains excess moisture'', or both, the receipt must be accompanied by a supplemental certificate as provided in § 1421.18 in order for the commodity to be eligible for a loan. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows ''infested'' and the commodity has been conditioned to correct the infested condition, the supplemental certificate must show the same grade without the ''infested'' designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iv) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (g)(2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending.

(iv) For commodities dried or blended in accordance with paragraph (g)(2)(iii) of this section, such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage:

(A) For the following commodities, 1.3 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Barley: 14.5 percent;

(*2*) Corn: 15.5 percent;

(*3*) Grain sorghum: 14.0 percent;

(*4*) Oats; 14.0 percent;

(*5*) Rice: 14.0 percent;

(*6*) Soybeans; 14.0 percent; and

(*7*) Wheat: 13.5 percent.

(B) For the following commodities, 1.1 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Canola: 10.0 percent;

(*2*) Flaxseed: 9.0 percent;

(*3*) Mustard Seed: 10.0 percent;

(*4*) Rapeseed: 10.0 percent;

(*5*) Safflower Seed: 10.0 percent; and

(*6*) Sunflower Seed: 10.0 percent.

(h)(1) If, in accordance with paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouse operator against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts that are stored in an approved warehouse that is operating in accordance with a Uniform Grain and Rice Storage Agreement (UGRSA) may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouse operator be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) Warehouse receipts representing commodities that have been shipped by rail or by barge, must be accompanied by supplemental certificates completed in accordance with paragraph (f) of this section.

§ 1421.10 Warehouse charges.

(a) CCC-approved handling and storage rates that may be deducted from loan proceeds are available in State and county offices. Such deductions shall be based upon the entries on the

warehouse receipt or supplemental certificate, but in no case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted indicating that:

(1) Storage charges through the maturity date have been prepaid; or

(2) The producer has arranged with the warehouse operator for the payment of storage charges through the maturity date and the warehouse operator enters an endorsement in substantially the following form on the warehouse receipt:

Storage arrangements have been made by the depositor of the grain covered by this receipt through (date through which storage has been provided). No lien will be asserted by the warehouse operator against CCC or any subsequent holder of the warehouse receipt for the storage charges that accrued before the specified date.

(b) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(c) For commodities delivered to CCC in settlement for a loan, CCC shall pay to the producer the warehouse charges for receiving the commodity, or incharges. If the warehouse receipt delivered to CCC in settlement for a loan shows that such charges have been paid, CCC shall issue such payment to the producer. If the receipt shows that such charges have not been paid, the producer will assign such payment to the warehouse and CCC shall issue such payment to the warehouse for the producer's account.

§ 1421.11 Liens.

(a) The county office shall file or record, as required by State law, all security agreements that are issued with respect to commodities pledged as collateral for loans. The cost of filing and recording shall be paid for by CCC.

(b) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1421.12 Fees, charges, and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees are available in State and county offices and are shown on the note and security agreement.

(b) Interest that accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of commodity that has been redeemed in accordance with § 1421.25 at a rate that is less than the principal amount of the loan plus charges and interest.

(c) For each crop of soybeans, the producer, as defined in the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. Chapter 6301), shall remit to CCC an assessment that shall be determined at the time CCC acquires the commodity, and shall be at a rate equal to one-half of 1 percent of the amount determined in accordance with § 1421.19.

(d) Additional fees representing amounts voted on by producers for marketing or promotional fees may be deducted from loan proceeds by CCC as requested and agreed to by the governing body of such marketing or promotional fee and CCC. Deduction of such fees from amounts due producers and the payment of such fees to such governing body shall be made by CCC in a manner and at such time as determined by CCC.

§§ 1421.13–1421.14 [Reserved]

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity pledged as collateral for a farm-stored loan. CCC shall not assume any loss in quantity or quality of the loan collateral for farm-stored loans.

§ 1421.16 Personal liability of the producers.

(a) When a producer obtains a commodity loan or requests a loan deficiency payment, the producer agrees:

(1) When signing Form CCC–666, Farm Stored Loan Quantity Certification, when applicable, Form CCC–677, Farm Storage Note and Security Agreement, and Form CCC–678, Warehouse Storage Note and Security Agreement, that the producer will not:

(i) Provide an incorrect certification of the quantity or make any fraudulent representation for the loan; or

(ii) Remove or dispose of a quantity of commodity that is collateral for a CCC farm-stored loan without prior written approval from CCC in accordance with § 1421.20;

(2) When signing Form CCC–666 LDP, Loan Deficiency Payment Application and Certification, or CCC–709, Direct Loan Deficiency Payment Agreement, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes; and

(3) That violation of the terms and conditions of the Form CCC–677, Form CCC–678, Form CCC–666 LDP, or Form CCC–709, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible.

(b) The violations referred to in paragraph (a) of this section are defined as follows:

(1) Incorrect certification is the certifying of a quantity of a commodity for the purpose of obtaining a commodity loan or a loan deficiency payment in excess of the quantity eligible for such loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments;

(2) Unauthorized removal is the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures that were designated when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the county committee in accordance with § 1421.20, if the movement of loan collateral prevents CCC from obtaining the first lien on such collateral; and

(3) Unauthorized disposition is the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the county committee in accordance with § 1421.20.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for the violations in accordance with paragraph (b) of this section. Accordingly, if the county committee determines that the producer has violated the terms and conditions of Form CCC–677, Form CCC–678, Form CCC–666 LDP, or Form CCC–709, as applicable, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity incorrectly certified or the loan quantity removed or disposed of for loan deficiency payment, the loan deficiency payment rate applicable to the loan deficiency quantity incorrectly certified, and charges, plus interest applicable to the amount repaid; and

(2) If the producer fails to pay such amount within 30 days from the date of notification, call the applicable loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee shall call the loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) if the county committee determines that:

(i) The violation occurred inadvertently, accidentally, or unintentionally; or

(ii) The producer acted to prevent spoilage of the commodity.

(2) Shall not consider the following acts as inadvertent, accidental, or unintentional:

(i) Movement of loan collateral off the farm;

(ii) Movement of loan collateral from one storage structure to another on the farm, except as provided for in §1421.17(b)(1); and

(iii) Feeding the loan collateral.

(3) Shall furnish a copy of its determination to the State committee, and the Administrator. If the determination of the county committee is not disapproved by either the State committee or the Administrator, FSA, or a designee, within 60 calendar days from the date the determination is received, such determination shall be considered to have been approved.

(g) If, for any violation in accordance with paragraph (b) of this section, the county committee determines that CCC's interest is not or will not be protected, the county committee shall call any or all of the producer's farm-stored loans, and deny future farm-stored loans and loan deficiency payments without production evidence for 24 months after the date the violation is discovered. Depending on the severity of the violation, the county committee may deny future farm-stored loans and loan deficiency payments without production evidence for an additional 12 month period.

(h) If the county committee determines that the producer has committed a violation in accordance with paragraph (b), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative actions will be taken in accordance with paragraphs (d) or (e) of this section.

(i) If the loan is called in accordance with this section, the producer may not repay the loan at the lower of the loan repayment rate in accordance with §1421.25 and may not utilize the provisions of part 1401 of this chapter with respect to such loan.

(j) Producers who have been refused a farm-stored loan under provisions of this section may apply for a warehouse-stored loan.

(k)(1) If a producer:

(i) Makes any fraudulent representation in obtaining a loan or loan deficiency payment, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan or loan deficiency payment;

(B) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(C) All other costs that CCC would not have incurred but for the fraudulent representation, the unauthorized disposition or movement of the loan collateral;

(D) Interest on such amounts; and

(E) Liquidated damages assessed under paragraph (c) of this section.

(2) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by:

(i) The forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts; or

(ii) By repayment of such loan at the lower loan repayment rate as prescribed in §1421.25 and may not utilize

the provisions of part 1401 of this chapter with respect to such loans.

(3) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with § 1421.20, the value of the settlement for such collateral delivered to or removed by CCC shall be determined by CCC in accordance with § 1421.22.

(l) A producer shall be personally liable for any damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(m) If the amount disbursed under a loan or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(n) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(o) In the case of joint loans or loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

(p) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) may be waived as determined by CCC.

§ 1421.17 Farm-stored commodities.

(a) The quantity of a commodity that shall be used to determine the amount of a farm-stored loan shall not exceed a percentage (the loan percentage), as established by the State committee that shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e). Farm-stored loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, such reduced quantity shall be the mortgaged quantity on the note and security agreement for the commodity in a bin, crib, or lot on which the loan is made.

(1) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan.

(2) With respect to all other commodities, the State committee may establish a loan percentage that does not exceed a percentage established by CCC or may apply quality discounts to the loan rate, each year for each commodity on a Statewide basis or for specified areas within the State. Before approving a county committee request to establish a different loan percentage, or to apply quality discounts, the State committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be reduced below the maximum loan percentage or the quality discounts should be applied to the basic county loan rate to provide CCC with adequate protection. Loans disbursed based upon loan percentages previously lowered and loan rates adjusted for quality shall not be altered if conditions within the State or areas within the State change to substantiate removing such reductions; percentages established or loan rates adjusted for quality in accordance with this section shall apply only to new loans and not to outstanding loans. The factors to be considered by the State committee in determining loan percentages or the necessity to apply quality discounts shall include but are not limited to:

(i) General crop conditions;

(ii) Factors affecting quality peculiar to an area within the State; and

(iii) Climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee when authorized on an individual farm, area,

or producer basis when determined to be necessary in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to:

(i) The condition or suitability of the storage structure;

(ii) The condition of the commodity;

(iii) The hazardous location of the storage structure, such as a location that exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity;

(iv) Any disagreement with respect to the quantity of the commodity to be pledged as collateral for a loan; and

(v) Such other factors that relate to the preservation or safety of the loan collateral.

(b) If an eligible quantity of a commodity except peanuts, has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless:

(1) The producer, when requesting a loan shall designate all structures that may be used for storage of the loan collateral. In such cases, the producer is not required to obtain prior written approval from the county committee before moving loan collateral from one designated structure to another designated structure. In all other instances, if the producer intends to move loan collateral from a designated structure to another undesignated structure, the producer must request prior approval from the county committee. Such approval shall be evidenced on Form CCC–687–1 and the eligible or ineligible commodity must be measured by a representative of the county office, at the producer's expense, before commingling; or

(2) The producer has made a certification with respect to the acreage planted to the commodity that is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production and purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county office at the producer's expense, before commingling. Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(c) Upon request by the producer before transfer, the county committee may approve the transfer of a quantity of a commodity that is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed 110 percent of the loan quantity transferred from the farm-stored loan.

(2) Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse-stored loan shall be the maturity date applicable to the farm-stored loan that was transferred.

(d) Upon request by the producer before the transfer, the county committee may approve the transfer of a warehouse-stored loan or part thereof to a farm-stored loan at any time during the loan period. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the farm-stored loan shall be the maturity date applicable to the warehouse-stored loan that was transferred.

(e) The quantity of a commodity pledged as security for a farm-stored loan or for which a loan deficiency payment is requested may be determined on the basis of the quantity of the commodity that an eligible producer certifies in writing on Form CCC–666 for a loan and Form CCC–666 LDP or CCC–709, as applicable, for a loan deficiency payment, is eligible to be pledged as collateral and is otherwise available for loan or loan deficiency payment purposes.

(f) If the county committee determines, by measurement or otherwise, that the actual quantity serving as collateral for a loan is less than the loan quantity, the county committee shall take the actions specified in § 1421.16.

§ 1421.18 Warehouse-stored loans.

(a) The quantity of a commodity that may be pledged as collateral for a loan shall be the quantity of any eligible commodity delivered to CCC for storage at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) To be eligible to be pledged as collateral for a loan, the commodity must not be Sample Grade and must meet the requirements of § 1421.5 and the commodity eligibility requirements, as determined by CCC. These requirements are available at State and county offices.

§ 1421.19 Liquidation of loans.

(a) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral without any further action by the producer. With respect to farm-stored loans, the producer may, as CCC determines, deliver the collateral for such loan in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of 110 percent of the outstanding farm-stored loan quantity. If a quantity in excess of 110 percent of the outstanding farm-stored loan quantity is shown on the warehouse receipt or other documents, the producer shall provide replacement warehouse receipts and delivery documents. If the warehouse receipt and such other documents applicable to the settlement are not replaced showing only the quantity eligible for delivery, CCC shall provide for such corrected documents and apply charges for such service, if any, to the producer's account as charges for settlement on the loan.

(b) If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office that disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC–691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this chapter.

(c) If, either before or after maturity, the commodity is going out of condition or is in danger of going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that the commodity is going out of condition or is in danger of going out of condition and the commodity cannot be satisfactorily conditioned by the producer and delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(d) If the producer loses control of the storage structure, or if there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm, the commodity may be delivered before the maturity date of the loan upon prior approval of the county committee in accordance with paragraph (a). Settlement will be made

with the producer as provided in § 1421.22.

§ 1421.20 Release of the commodity pledged as collateral for a loan.

(a) A producer, when requesting a loan shall designate specific storage structures on Form CCC–677, in accordance with § 1421.17(b)(1). The producer is not required to request prior approval before moving loan collateral between such designated structures. Movement of loan collateral to any other structures not designated on CCC–677, or the disposal of such loan collateral without prior written approval of the county committee, shall subject the producer to the administrative actions specified in § 1421.16. A producer may at any time obtain the release, in accordance with this section, of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released:

(1) The principal amount of the loan that is outstanding and charges plus interest; or

(2) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. The producer may request and CCC may approve removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan before such removal does not exceed the maximum loan value of the quantity of the commodity remaining in storage after such removal. When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, such producer may not repay the loan at the rate that is less than the loan rate determined in accordance with § 1421.25(a)(1)(ii) or (b)(2).

(b) CCC may allow a producer to establish a loan repayment rate determined in accordance with § 1421.25 (a)(1)(ii) or (b)(2) on Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, provided the producer complies with all terms and conditions set forth on Form CCC–681–1. If a producer fails to repay a loan within the time period prescribed by CCC in accordance with the terms and conditions of Form CCC–681–1 and the commodity pledged as collateral for such loan has been delivered to a buyer in accordance with Form CCC–681–1, such producer may not repay the loan at the rate that is less than the loan rate determined in accordance with § 1421.25 (a)(1)(ii) or (b)(2).

(c)(1) The producer may arrange with the county office for the release of all or part of the commodity that is pledged as collateral for a warehouse-stored loan at or before the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC:

(i) The principal amount of the loan and charges plus interest; or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Warehouse receipts redeemed by repayment of the loan shall be released only to the producer. However, such receipts may be released to

persons designated in a written authorization that is filed with the county office by the producer within 15 days before the date of repayment.

(2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouse operator, CCC may, during the loan period, approve the reconcentration in another CCC-approved warehouse of all or part of a commodity that is pledged as collateral for a warehouse-stored loan. Any such approval shall be subject to the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt.

(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:

(i) The principal amount of the loan and charges plus interest and applicable charges; or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25.

(d) The note and security agreement shall not be released until the loan has been satisfied in full.

(e) If the commodity is moved on a non-workday from storage without obtaining prior approval to move such commodity, such removal shall constitute unauthorized removal or disposition, as applicable, of such commodity unless the producer notifies the county office the next workday that such commodity has been moved and such movement is approved by CCC.

§ 1421.21 [Reserved]

§ 1421.22 Settlement.

(a) The value of the settlement of loans shall be made by CCC on the following basis:

(1) With respect to nonrecourse loans, the schedule of premiums and discounts for the commodity:

(i) If the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If the value of the collateral at settlement is greater than the amount due, such excess shall be retained by CCC and CCC shall have no obligation to pay such amount to any party.

(2) With respect to recourse loans, the proceeds from the sale of the commodity:

(i) If the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If the proceeds received from the sale of the commodity are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the commodity, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

(3) If CCC sells the commodity described in paragraph (a)(1) or (a)(2) in settlement of the loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale. CCC may deduct such amount from the sales proceeds.

(b) Settlements made by CCC with respect to eligible commodities that are acquired by CCC and that are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(c)(1) All eligible commodities that are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(2) With respect to all commodities, except peanuts, that are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic loan rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement

shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 15 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut loan rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, a loan shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with part 729 of this title.

(iv) The loan rate for additional peanuts shall be used for all peanuts that do not grade Segregation 1 at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the under-marketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates.

(d) A producer may be required to retain and store the commodity that is pledged as collateral for a loan for a period of 60 days after the maturity date of a loan without any cost to CCC if CCC is unable to take delivery of the commodity. If CCC is unable to take delivery of the commodity within the 60-day period after the loan maturity date, the producer shall be paid a storage payment upon delivery of the commodity to CCC. The storage payment shall be computed at the storage rate stated in the applicable CCC storage agreement for the commodity in effect at the delivery point where the producer delivers the commodity. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after such maturity date and extend through the earlier of:

(1) The final date of actual delivery; or

(2) The final date for delivery as specified in the delivery instructions issued to the producer by the county office.

(e) When a producer is directed by the county office to haul the commodity for delivery, except aromatic rice, a greater distance than would have been necessary to make delivery to the producer's customary delivery point, as determined by CCC, the producer will be allowed compensation, as determined by the State committee at a rate not to exceed the common carrier truck rate or the rate available from local truckers, for hauling the eligible commodity the additional distance. In determining the rate of payment for excess hauling, the State committee may establish reasonable mileage minimums below which producers will not receive compensation for hauling.

(f)(1) Producers may request trackloading for loan collateral where approved warehouse space is not available locally or where KCCO determines that it would be to the benefit of CCC. Where local weighing facilities are not available or when requested by producers, destination weights may be

used for settlement purposes. All producers loading in the same car must sign an agreement stating the percentage share of the total quantity to be credited to each. When requested by producers before delivery of the commodity, settlement may be made on the basis of destination grades. Such destination grade determination for a car shall be applied to the entire quantity of a commodity loaded into the same car, regardless of the grade or quality of a commodity loaded into the car by any producer.

(2) A trackloading payment of 19 cents per bushel (or 31.66 cents per hundredweight in the case of sorghum, oilseeds, and rice, excluding aromatic rice) shall be made to the producer on an eligible commodity delivered to CCC under this subsection.

(g) If a farm-stored commodity is delivered in advance of the applicable loan maturity date as provided in § 1421.19, a deduction for storage charges shall be made. The deduction shall be made for the period from the date of delivery to the applicable maturity date for the commodity. Such deduction shall be at the rate charged by the warehouse to which the commodity was delivered. No deduction for storage charges shall be made for early delivery of a farm-stored commodity if the loan maturity date is accelerated by CCC under a general acceleration of the maturity date in a particular area.

(h) A refund of warehouse storage charges will be made by CCC to the producer if the maturity date of a warehouse storage loan is accelerated by CCC for reasons other than any wrongful act or omission on the part of the producer, and the commodity is not redeemed. The amount of the storage charges to be refunded shall be computed at the lesser of the UGRSA rate or the rate prepaid by the producer for the period of unearned storage.

(i) If a warehouse charges the producer for either the receiving charges or the receiving and loading out charges on an eligible commodity in an approved warehouse, the producer shall, upon delivery to CCC of warehouse receipts representing the commodity stored in such warehouse, be reimbursed or given credit by the county office for such prepaid charges at the lesser of the UGRSA rate or the rate prepaid by the producer. The producer must furnish to the county office, written evidence signed by the warehouse operator that such charges have been paid.

§ 1421.23 Foreclosure.

(a) Upon maturity and nonpayment of a warehouse-stored loan, title to the unredeemed collateral securing the loan shall immediately vest in CCC. Upon maturity and nonpayment of farm-stored loan, title to the unredeemed collateral securing the loan shall vest in CCC upon demand. When CCC acquires title to the unredeemed collateral, CCC shall have no obligation to pay for any market value that such collateral may have in excess of the loan indebtedness, (the unpaid amount of the note and charges plus interest).

(b) If the total amount due on a farm-stored loan (the unpaid amount of the note and charges, plus interest) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. Any such disposition may also be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity at either a public or private sale.

(c) If a farm-stored commodity removed by CCC from storage is sold, the value of the settlement for the commodity shall be determined according to § 1421.22. If a deficiency exists, the amount of the deficiency may be setoff from any payment that would otherwise be due the producer from CCC or any other agency of the United States.

§ 1421.24 Protein determinations.

(a) With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC that is stored in an approved warehouse, producers must obtain official protein content determinations or, if determined acceptable by CCC, protein content determinations arrived at by

mutual agreement between the producer and the warehouse operator. Costs of such determinations shall not be paid by CCC.

(b) With respect to farm-stored wheat, the basic loan rate shall not be adjusted to reflect the protein content.

§ 1421.25 Loan repayments.

(a) Rice market repayments.

(1) A producer may repay a nonrecourse loan for a 1996 through 2002 crop of rice at a rate that is the lesser of:

(i) The loan rate and charges, plus interest determined for a crop; or

(ii) The prevailing world market price, as determined by CCC.

(2) The prevailing world market price for a class of rice shall be determined by the CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and shall be expressed in U.S. equivalent values f.o.b. vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2, 4 percent broken kernels, long grain milled rice;

(ii) U.S. grade No. 2, 4 percent broken kernels, medium grain milled rice; and

(iii) U.S. grade No. 2, 4 percent broken kernels, short grain milled rice.

(3) Export transactions involving rice and all other related market information will be monitored on a continuous basis for the purposes of paragraph (2). Relevant information may be obtained for this purpose from U.S. Department of Agriculture field reports, international organizations, public or private research entities, international rice brokers, and any other source of reliable information.

(4) The prevailing world market price for a class of rice adjusted to U.S. quality and location (the adjusted world price (AWP)), that is determined in accordance with paragraph (5), shall be applicable to the provisions in this section.

(5) The AWP for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined in accordance with paragraphs (a) (2) and (3) and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice shall be adjusted to reflect an f.o.b. mill position by deducting from such calculated price an amount that is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to f.o.b. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking changes, storage, and administrative costs.

(ii) The price determined in accordance with paragraph (a)(5)(i) shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the world value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the world market value of such broken kernels. The world market value of broken kernels shall be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

(iii) The price determined in accordance with (a)(5)(ii) shall be adjusted to reflect the per pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96% per hundredweight).

(iv) The price determined in accordance with paragraph (a)(5)(iii) shall be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined in accordance with paragraph (a)(5)(iv) shall be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(*1*) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(*2*) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated world market value of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice;

(B) Deducting from such price:

(*1*) An estimated cost of milling rough rice; and

(*2*) An estimated cost of transporting rough rice from farm to mill locations.

(vi) The price determined in accordance with paragraph (a)(5)(v) may be adjusted to a whole kernel loan rate basis by deducting the estimated world market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(6)(i) The adjusted world price for each class for rice, loan rate basis, shall be determined by CCC and shall be announced, to the extent practicable, on or after 3 p.m. eastern time each Tuesday, but may be announced more frequently, as determined by CCC, continuing through the later of:

(A) The last Tuesday of July 2003; or

(B) The last Tuesday of the latest month the 2002-crop rice loans mature.

(ii) In the event that Tuesday is a non-workday, the determination will be made on the next workday, on or after 3 p.m. eastern time.

(iii) The announced prices will be effective upon announcement and will remain in effect for a period as announced by the CCC.

(7) Notwithstanding any other provision of this section, on the day of the announcement of the adjusted world price, between 2 p.m. eastern time and the time of the world price announcement, CCC will not accept repayments of rice loans at a world market price level not previously locked-in, and applications for lock-in of a rice loan repayment rate.

(b) For 1996 through 2002 crops of barley, corn, grain sorghum, oats, wheat, and oilseeds, a producer may repay a nonrecourse loan at a rate that is the lesser of:

(1) The loan rate and charges, plus interest determined for such crop; or

(2) The alternative repayment rate for barley, corn, grain sorghum, oats, wheat, and oilseeds.

(c) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the previous day's market prices at appropriate U.S. terminal markets as determined by CCC, adjusted to reflect quality and location for each crop of a commodity as follows:

(1) On a weekly basis in each county for oilseeds, except soybeans; and

(2) On a daily basis in each county for barley, corn, grain sorghum, oats, soybeans, and wheat.

§ 1421.26 Transfer of farm-stored loan to warehouse-stored association loan.

Producers may deliver peanuts under a farm-stored loan to the association and obtain loan advances on such peanuts with the prior approval of the county office anytime on or before January 31 following the calendar year in which the crop was grown. Association advances shall be payable jointly to the producer and the CCC and shall be used to settle the farm-stored loan.

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) Producer-handlers may, at any time before loan maturity, forfeit their additional peanuts to CCC and immediately repurchase such peanuts from CCC by paying the amount necessary under the following sales policies:

(1) For unrestricted use, at a price determined by CCC but, for the applicable type, not less than 105 percent of the quota loan rate, if purchased before December 31 of the calendar year in which the crop was grown, and at not less than 107 percent of the quota loan rate, if purchased after December 31 of the calendar year in which the crop was grown;

(2) For edible export, at a price determined by CCC but not less than any minimum sales price determined and announced by CCC; and

(3) For crushing (either domestic or export), at a price determined by CCC but not less than the additional loan rate for the applicable type.

(b) For purchases on or before January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Loans will be settled at the county office, and amounts collected in excess of that necessary to settle loans will be remitted to the association for the respective area. The association will credit such amounts to the appropriate loan pool. The producer should be listed as a participant in the loan pool for the purpose of determining and distributing net gains from the loan pool.

(c) For purchases after January 31 following the calendar year in which the crop was grown, the county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a). Any amount collected in excess of the loan indebtedness shall accrue to CCC.

[61 FR 37581, July 18, 1996, as amended at 62 FR 62692, Nov. 25, 1997]

§ 1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.

(a)(1) Each producer-handler shall maintain records as required in part 1446 of this chapter for all additional peanuts that are purchased and sold for which an ASCS–1007, Inspection Certificate and Sales Memorandum, is issued.

(2) The following records shall be maintained for all peanuts purchased from CCC that are not inspected. Each producer-handler shall maintain records that show all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, and to whom sold. Records shall be maintained in such a manner that will enable the county office to readily reconcile quantities sold with all peanuts produced by the producer. All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

(b)(1) The county office shall inspect and account for all additional peanuts pledged as collateral for a loan as determined necessary by the county committee.

(2) The county office shall supervise the disposition of all additional peanuts purchased for use as seed and not inspected. The identical peanuts pledged as collateral for a loan must be disposed of and the producer must account for all peanuts that were under additional loan. The producer-handler shall request a county office representative to supervise the disposition of the peanuts and shall give the county office at least 3 working days notice of the date of such disposition. The county office shall determine the extent to which supervision is needed.

(3) With respect to additional peanuts on which ASCS–1007 is issued, the producer-handler shall be subject to all provisions in part 1446 of this chapter relating to the disposition of additional peanuts.

(c) The producer-handler shall pay all costs of supervision, as determined by the county committee for county office supervision when county office supervision is completed, and or determined by the association for peanuts supervised by association representatives when association supervision is completed.

(d) The producer-handler is subject to penalties as provided in part 1446 of this chapter with respect to any peanuts purchased in accordance with § 1421.27.

§ 1421.29 Loan deficiency payments.

(a) CCC will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year.

(b) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans in accordance with this part;

(2) Agree to forego obtaining such loans;

(3) File and request payment on Form CCC–666 LDP, unless the producer enters into an agreement according to paragraph (h), for a quantity of an eligible commodity; and

(4) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the loan rate for the crop exceeds the rate at which CCC has announced that producers may repay their loans in accordance with § 1421.25. Such rate shall be the amount determined on the day the producer submits a completed request for a loan deficiency payment to the county office. When such request is for rice and the request provides that the loan deficiency payment rate shall be based on the date of delivery, and the documentation of delivery indicates the rice was delivered after 3 p.m. eastern time, the loan deficiency payment rate in effect after 3 p.m. eastern time of the delivery date shall be used. In all other cases for rice where the loan deficiency payment rate is based on the delivery date, the payment rate in effect at 12:00:01 a.m. eastern time of the delivery date shall be used.

(d) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (c), by the quantity of the crop the producer is eligible to pledge as collateral for a nonrecourse loan for which the loan deficiency payment is requested.

(e) The total amount of loan deficiency payment a producer may receive is limited in accordance with the regulations at part 1400 of this chapter.

(f) CCC will make the loan deficiency payment in accordance with paragraph (d). Notwithstanding any provisions in this part, a loan deficiency payment may be based on 100 percent of the net eligible quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided for such commodity. If such production evidence is provided, CCC shall limit such increase in loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

(g) Notwithstanding any other provision of this section, on the day of the announcement of the adjusted world price, applications for loan deficiency payments for rice that specify the payment rate will not be accepted between 2 p.m. eastern time and the time of the world price announcement.

(h) If the producer enters into an agreement with CCC on or before the date of harvesting a quantity of an eligible commodity and the producer has the beneficial interest in such quantity as specified in accordance with § 1421.5(c) on the date the commodity was harvested, the loan deficiency payment rate applicable to such commodity would be the loan deficiency payment rate based on the date the commodity was delivered to the processor, buyer, warehouse, or CMA. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with § 1421.5.

§ 1421.30 Death, incompetency, or disappearance.

In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan or loan deficiency payment, payment shall, upon proper application to the county office that made the loan or loan deficiency payment, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title.

§ 1421.31 Recourse loans.

(a) CCC shall make recourse loans available to eligible producers of high moisture corn and high moisture grain sorghum. Repayment of such recourse loans shall be in accordance with the terms and conditions set forth by CCC.

(b) CCC may make recourse loans available to eligible producers with respect to commodities not specified in paragraph (a). Repayment of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

(c) The value of the collateral for settlements described in paragraphs (a)

and (b) shall be determined by CCC according to § 1421.22.

§ 1421.32 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less that are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

Subpart—Regulations Governing the Wheat and Feed Grain Farmer-Owned Reserve Program for 1990 through 1995 Crops

§ 1421.200 Administration.

The Wheat and Feed Grain Farmer Owned Reserve (FOR) Program was not reauthorized by Congress for the 1996 crop. Effective for the 1990 through 1995 crops, the regulations setting forth the applicable terms and conditions for the Wheat and Feed Grain Farmer Owned Reserve (FOR) Program can be found in the regulations published in 7 CFR Part 1421 as of January 1, 1996, shall be applicable for any outstanding FOR loans on or after April 4, 1996.

[61 FR 37595, July 18, 1996]

Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

SOURCE: 44 FR 67078, Nov. 23, 1979, unless otherwise noted.

§ 1421.5551 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the initial or continuing approval by the Commodity Credit Corporation (hereinafter referred to as ''CCC'') of warehouse(s) for the storage and handling of:

(1) Wheat, oats, corn, rye, barley, sorghums, flaxseed, soybeans, sunflower seed, canola, rapeseed, safflower, mustard, and such other oilseeds as the Secretary may determine under a Uniform Grain Storage Agreement (which commodities are hereinafter referred to as ''grain''),

(2) Rough rice under a Uniform Rice Storage Agreement,

(3) Milled rice under a Milled Rice Storage Agreement,

(4) Dry Edible Beans under a Bean Storage Agreement, and

(5) Seed under a Seed Storage Agreement, which are owned by CCC or held by CCC as security for price support loans.

This subpart is not applicable to grain, rough and milled rice, dry edible beans, and seed purchased in store for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the ''KCCO'').

(c) A warehouse must be approved by KCCO and a storage contract or agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage contract or agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart, shall submit to CCC at KCCO:

(1) A completed Form CCC–24, ''Application for Approval of Warehouse for Grain, Rice, Dry Edible Beans, and Seed'', and a completed Form CCC–24–1, ''Supplement to Application for Approval of Warehouse for Grain, Rice, Dry Edible Beans, and Seed'',

(2) A current financial statement prepared in accordance with generally accepted accounting principles meeting the following requirements:

(i) Each financial statement shall include, but not be limited to the following:

(A) A balance sheet;

(B) A statement of income (profit and loss);

(C) Statement of retained earnings; and

(D) A statement of changes in the financial position.

(ii) Each financial statement shall be accompanied by one of the following:

(A) A report of audit or review conducted by an independent CPA or an independent public accountant in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's report of audit or review shall include the accountant's certifications, assurances, opinions, comments, and notes with respect to such financial statement, or

(B) A compilation report of the financial statement which is prepared by a grain commission firm or a management firm if such firm has been authorized by the Deputy Vice President, CCC (Deputy Administrator, Commodity Operations, FSA) to provide a compilation report of financial statements of warehousemen.

(iii) All financial statements shall be accompanied by a certification by the chief executive officer of the warehouseman, under penalty of perjury, that the financial statement(s) accurately reflects the financial condition of the warehouseman for the period specified in such statement.

(iv) A current financial statement on Form WA–51–2, ''Financial Statement'', supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA–51–2 with approval of the Director, KCCO, or the Director's designee.

(v) Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1421.5552(a)(2) and such other documents or information as CCC may require.

(e) The provisions of paragraph (d)(2) of this section shall also be applicable to warehousemen who have an existing storage contract with CCC. Such warehousemen with existing storage contracts shall submit their financial statements to CCC in the manner prescribed reflecting their financial condition as of the close of the warehouseman's fiscal or calendar year's operation, whichever is applicable. Thereafter, the financial statements and the audit, review or compilation reports shall be furnished annually to reflect the warehouseman's fiscal or calendar year's operation, whichever is applicable, and at such other times as may be required by the AMS or CCC.

[44 FR 67078, Nov. 23, 1979, as amended at 47 FR 22502, May 25, 1982; Amdt. 4, 50 FR 29640, July 22, 1985; 56 FR 46371, Sept. 12, 1991]

§ 1421.5552 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC owned or loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of $50,000 or an amount which is computed by multiplying the maximum storage capacity of the warehouse (the total quantity of the commodity which the warehouseman desires to store and which the warehouse can accommodate when stored in the customary manner) under the approved contract with CCC times twenty-five (25) cents per bushel in the case of

grain, fifty (50) cents per hundredweight in the case of rough rice, eighty-five (85) cents per hundredweight in the case of milled rice, and sixty (60) cents per hundredweight in the case of dry edible beans. In the case of seed, the net worth of the warehouseman shall be at least equal to an amount which is computed by multiplying the estimated number of pounds of seed to be stored times seven (7) cents per pound. If this calculated net worth requirement exceeds $50,000, the warehouseman may satisfy any deficiency in net worth between the $50,000 minimum requirement and such calculated net worth requirement by furnishing bonds, irrevocable letters of credit, or other acceptable substitute security meeting the requirements of § 1421.5553.

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected upon request by CCC, any deficiencies in the performance of any storage contract or agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only prenumbered warehouse receipts and scale tickets,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to complete load out within sixty (60) working days of that quantity of grain, rice, beans, or seed for which the warehouse is or may be approved under the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, or Seed Storage Agreement. Notwithstanding the provisions of this paragraph, the load out capacity of any warehouse at a single location need not exceed the equivalent of 200 railroad cars per day.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operations shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials, and each of the supervisory employees of the warehouseman in charge of the warehouse operations shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

[44 FR 67078, Nov. 23, 1979, as amended by Amdt. 4, 50 FR 29640, July 22, 1985; 51 FR 32627, Sept. 15, 1986; 55 FR 11572, Mar. 29, 1990]

§ 1421.5553 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(b) Such bond shall be on Form CCC–33, ''Warehouseman's Bond'', except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC,

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than ninety (90) days or includes a

rider providing for not less than ninety (90) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage contract or agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC–33A, ''Irrevocable Letter of Credit'', or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

[44 FR 67078, Nov. 23, 1979, as amended by Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5554 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage or handling of commodities and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1421.5555 Exceptions.

Notwithstanding any other provisions of this subpart:

(a) The financial, bond, and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of commodities under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodities but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $50,000 but who fails or whose warehouse fails to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67078, Nov, 23, 1979, as amended at 51 FR 32627, Sept. 15, 1986]

§ 1421.5556 Approval of warehouses, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1421.5552, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (hereinafter referred to as ''FSA''). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman shall be considered as a ''participant''; and

(2) In § 1421.5552(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 4, 50 FR 29640, July 22, 1985]

§ 1421.5557 Exemption from requirements.

If warehousing services in any area cannot be secured under the provisions of the subpart and no reasonable and economic alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC, may temporarily exempt, in writing, applicants for storage agreements and warehousemen who are currently under contract with CCC in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to satisfactorily safeguard the interests of CCC.

[53 FR 8746, Mar. 17, 1988]

§ 1421.5558 Contract and application and inspection fees.

(a) Each warehouseman who has a non-federally licensed grain or rice warehouse in States that do not have a Cooperative Agreement with CCC for warehouse examinations must pay an annual contract fee to CCC for each such warehouse which is approved by CCC or for which CCC approval is sought as follows:

(1) A warehouseman who has an existing agreement with CCC for the storage or handling of CCC-owned commodities or commodities pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under that agreement in advance of the renewal date of such agreement.

(2) All grain and rice warehousemen who do not have an existing agreement with CCC for the storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral but who desire such an agreement must pay an application and inspection fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination. The annual contract fee must be paid by the warehouseman to CCC prior to the time that the agreement is entered into.

(3) The contract fee will be prorated based upon the total number of months for which the contract is to be effective.

(4) CCC may, upon the request of a warehouseman, conduct an examination of a warehouse for the sole benefit of the warehouseman and such warehouseman shall pay to CCC a fee equal to 1½ times the amount of the warehouseman's annual contract fee for such examination.

(b) Any subsequent changes in the contract and application fees shall be announced in the FEDERAL REGISTER.

[Amdt. 4, 50 FR 29641, July 22, 1985, as amended at 51 FR 32627, Sept. 15, 1986; 53 FR 10062, Mar. 29, 1988]

§ 1421.5559 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR part 1421) have been approved by

the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0009 and 0560–0036.

[Amdt. 4, 50 FR 29641, July 22, 1985]

PART 1423—PROCESSED AGRICULTURAL COMMODITIES

Subpart—Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils

Sec.

1423.1 General statement and administration.
1423.2 Basic standards.
1423.3 Bonding requirements for net worth.
1423.4 Examination of warehouses.
1423.5 Exceptions.
1423.6 Approval of warehouse, requests for reconsideration.
1423.7 Exemption from requirements.
1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, (15 U.S.C. 714b and c).

Subpart—Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils

SOURCE: 44 FR 67081, Nov. 23, 1979, unless otherwise noted.

§ 1423.1 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as ''CCC'') of warehouse(s) for the storage and handling of:

(1) Dry or refrigerated processed agricultural commodities under a Processed Commodities Storage Agreement (hereinafter referred to as ''processed commodities''),

(2) Bulk oils, under a Contract or Agreement for Tank Storage, which are owned by CCC or held by CCC as collateral for price support loans, and

(3) Extracted Honey (hereinafter referred to as ''honey'') under a Honey Storage Agreement, either in bulk or in containers meeting specifications in the applicable honey price support regulations, which is owned by CCC or held by CCC as security for price support loans. This subpart shall not apply to processed commodities, extracted honey, and bulk oils purchased in store by CCC for prompt shipment or to handling of commodities.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the ''KCCO'').

(c) A warehouse must be approved by KCCO and a storage contract or agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage contract or agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman when applying for approval under this subpart, shall submit to CCC at KCCO:

(1) A completed Form CCC–560, ''Application for Approval of Warehouse (Processed Commodities)'', or Form CCC–513, ''Application for Approval of Tank Farm'', or Form CCC–55, ''Application for Approval of Warehouse for Honey Storage Contract'', whichever is applicable,

(2) A current financial statement on Form WA–51, ''Financial Statement'', supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA–51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and

at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Copies of the warehouseman's tariff and any changes thereto, and

(4) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1423.2(a)(2) and such other documents or information as CCC may require.

[44 FR 67081, Nov. 23, 1979, as amended at 45 FR 84009. Dec. 22, 1980; Amdt. 3, 50 FR 42512, Oct. 21, 1985]

§ 1423.2 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business.

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations.

(3) Have a net worth which is the greater of $25,000 or (i) for dairy and other processed commodities (other than those shown in paragraph (a)(3)(ii) of this section, the amount which results from multiplying five (5) percent of the current purchase price, times the quantity of the commodity to be stored; (ii) for honey, sugar and bulk oils, the amount which results from multiplying the storage capacity of the flat warehouse space available to CCC or the maximum capacity of the bulk tank(s), whichever is applicable, times five (5) percent of the current loan value for honey and sugar and five (5) percent of the current market value for bulk oils. The net worth need not exceed $250,000. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bonds (or acceptable substitute security) meeting the requirements of § 1423.3,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactory corrected, upon request by CCC, any deficiencies in the performance of any storage contract or agreement with CCC,

(6) Use only warehouse receipts or such other documents as CCC may prescribe,

(7) Maintain accurate and complete inventory and operating records,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to complete loadout as stated below or as CCC may prescribe:

(i) Forty-five (45) working days of the total quantity of all honey and processed commodities stored for CCC.

(ii) Seventy-five (75) working days of that quantity of bulk oils for which the warehouse is or may be approved under a contract with CCC.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operations shall have the necessary experience, organization technical qualifications, and skills in the warehousing business regarding the applicable commodity to enable them to provide proper storage and handling services.

(c) Warehouseman, officials, and each of the supervisory employees of the warehouseman in charge of the warehouse operations shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times. If a warehouse is leased by the warehouseman, a copy of the written lease agreement must be furnished to CCC at the time the warehouseman applies for approval under this subpart. The lease agreement must be renewable and must provide that the lessor cannot cancel the agreement without giving at least 120 days notice to the warehouseman. All leases are subject to approval by the CCC Contracting Officer, and

(3) Not be subject to greater than normal risk of fire, flood or other hazards.

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42512, Oct. 21, 1985]

§ 1423.3 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(b) Such bond shall be on Form CCC–33, ''Warehouseman's Bond'', except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than one hundred twenty (120) days or includes a rider providing for not less than one hundred twenty (120) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage contract or agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC–33A, ''Irrevocable Letter of Credit'', or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

(Pub. L. 80–89, 62 Stat. 1070, as amended (15 U.S.C. 714b))

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.4 Examination of warehouses.

Except as otherwise provided in this subpart a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage or handling of commodities and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1423.5 Exceptions.

Notwithstanding any other provisions of this subpart:

(a) The financial, bond, and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of commodities under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodities, but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67081, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.6 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart; and

(2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1423.2, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (hereinafter referred to as ''FSA''). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman shall be considered as a ''participant'''; and

(2) In § 1423.2(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§ 1423.7 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart, and no reasonable and economical alternative is available for securing such services, the President or Executive Vice President, CCC, may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

§ 1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR part 1423, Subpart—Standards for Approval for Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Oils) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0052, 0560–0044, 0560–0064, 0560–0065, 0560–0034, and 0560–0041.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

PART 1424—BIOENERGY PROGRAM

Sec.

1424.1 Applicability.
1424.2 Administration.
1424.3 Definitions.
1424.4 General eligibility rules.
1424.5 Application process.
1424.6 Eligibility determinations.
1424.7 [Reserved]
1424.8 Payment amounts.
1424.9 Reports required.
1424.10 Succession and control of facilities and production.
1424.11 Maintenance and inspection of records.
1424.12 Appeals.
1424.13 Misrepresentation and scheme or device.

AUTHORITY: 15 U.S.C. 714 c (e); Section 5(e) of the Commodity Credit Corporation Charter Act.

SOURCE: 65 FR 67614, Nov. 13, 2000, unless otherwise noted.

§ 1424.1 Applicability.

This part establishes the Bioenergy Program (Program). It sets forth the terms and conditions a bioenergy producer must meet to obtain payments from the Commodity Credit Corporation (CCC) for eligible bioenergy production. Additional terms and conditions are set forth in Form CCC–850, Bioenergy Program Agreement.

§ 1424.2 Administration.

(a) On behalf of CCC, the Farm Service Agency (FSA) will administer the provisions of this part under the general direction and supervision of the Deputy Administrator, Commodity Operations (Deputy Administrator), FSA.

(b) The Deputy Administrator or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Program, and may set such additional requirements as will facilitate the operation of the program.

§ 1424.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart.

Agreement means the Bioenergy Program Agreement, Form CCC–850.

Application means the Bioenergy Program Application, Form CCC–850–A.

ATF is the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury.

Biodiesel is a nontoxic, biodegradable replacement for or additive to petroleum diesel derived from the oils and fats of plants and animals and manufactured in the United States. Chemically, biodiesel is described as a mono alkyl ester.

Biodiesel producer is a producer that produces and sells biodiesel who is also registered and in good standing with Environmental Protection Agency under Clean Air Act Amendment of 1990, Title II, Section 211(b).

Bioenergy means ethanol and biodiesel produced from eligible commodities.

Eligible commodity means barley, corn, grain sorghum, oats, rice, wheat, soybeans, sunflower seed, canola, crambe, rapeseed, safflower, sesame seed, flaxseed, mustard seed, and cellulosic crops, such as switchgrass and short rotation trees, grown on farms for the purpose of producing ethanol and or biodiesel or any other commodity or commodity by-product as determined and announced by CCC used in ethanol

and biodiesel production which is produced in the United States and its territories.

Eligible producer means a bioenergy producer who has been determined by CCC to be eligible to receive Program payments and has entered into an Agreement with CCC.

Ethanol is anhydrous ethyl alcohol manufactured in the United States and sold:

(1) For fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the ATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use.

Ethanol producer is a producer that has authority from the ATF to produce ethanol.

FSA means the Farm Service Agency, USDA.

FY means fiscal year beginning each October 1 and ending September 30 of the following year.

Gallon Conversion factor shall be:

(1) 2.5 bushels, unless otherwise determined through review of an individual Program participant by CCC, of ethanol produced per bushel of corn used in ethanol production;

(2) 1.4 bushels, unless otherwise determined through review of an individual Program participant by CCC, of biodiesel per bushel of soybeans used in biodiesel production; or

(3) As determined by CCC for other eligible commodities.

KCCO means Kansas City Commodity Office.

Producer is a legal entity (individual, partnership, cooperative, or corporation, etc.) who is a commercial bioenergy producer making application under this program.

Quarter means the respective time periods of October 1 through December 31, January 1 through March 31, April 1 through June 30, and July 1 through September 30 of each FY, as applicable.

USDA means the United States Department of Agriculture.

§ 1424.4 General eligibility rules.

To obtain Program payments, a producer must do all of the following:

(a) Obtain an Agreement, Form CCC–850, from the KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141–6205 or via the internet at: www.fsa.usda.gov/daco/bioenergy/bioenergy.htm;

(b) Submit a completed Agreement, Form CCC–850, to CCC no later than October 1 of each year or a later date, if announced by CCC, to KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141–6205;

(c) Be assigned an Agreement number by KCCO indicating the producer is eligible for program payments;

(d) Maintain records indicating:

(1) Commodities for which it seeks payment;

(2) The quantity of bioenergy produced from an eligible commodity by location during the quarter FY to date compared to the same time period in the previous FY; and

(3) The quantity of eligible commodity used to produce the bioenergy stated in paragraph (d)(2) of this section during the quarter FY to date compared to the same time period in the previous FY;

(e) Furnish CCC such certification, and access to such records, as CCC considers necessary to verify compliance with Program provisions;

(f) Make Application submissions in accordance with § 1424.9;

(g) If not purchasing raw commodity input, be able to prove to CCC's satisfaction that both the producer's net purchases of eligible commodities and net production of bioenergy increased as compared to such production at all locations during the relevant base period. Except as otherwise provided for by CCC, the increase in production must equal or exceed that amount of energy production which would be calculated using the gross amount of agricultural commodities which forms the basis of the payment and the conversion factor set out in § 1424.2. Example: A producer that purchases soy oil from a soybean crushing plant for further refinement into biodiesel must be able to prove to CCC's satisfaction that both soy oil purchases and biodiesel production increased for the applicable quarter;

(h) Certify the accuracy and truthfulness of the information provided in their Agreement on Form CCC–850; and

(i) Allow verification by CCC of all information provided. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a determination of ineligibility.

(j) Meet all other conditions for payment which are set out in the Agreement or in these regulations or otherwise.

§ 1424.5 Application process.

To receive payments under this program during a FY, an eligible producer must:

(a) Have an approved Agreement in accordance with § 1424.4(b) and an Agreement number assigned by KCCO under § 1424.4(c);

(b) Obtain an Application, Form CCC–850–A, from the KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141–6205 or via the internet at: www.fsa.usda.gov/daco/bioenergy/bioenergy.htm;

(c) Submit applications for each quarter. Submit the last quarterly application of the FY within 30 calendar days of the end of the FY for which payment is requested. If the actual deadline is a non-workday, the deadline will be the next business day;

(d) Submit other relevant documents as required by CCC for the specific commodity; and

(e) Certify with respect to the accuracy and truthfulness of the information provided.

§ 1424.6 Eligibility determinations.

(a) Applicants will, after Agreements are submitted, if:

(1) Determined eligible, receive notification of eligibility;

(2) Determined ineligible, be notified in writing of ineligibility for program participation and reason for the determination; or

(3) Additional information is needed for CCC to determine eligibility, be contacted for additional supporting documentation.

(b) Applicants will, after Applications are submitted, if:

(1) Determined eligible, receive payment;

(2) Determined ineligible, be notified in writing of ineligibility for payment and reason for determination; or

(3) Additional information is needed for CCC to determine eligibility, be contacted for additional supporting documentation.

§ 1424.7 [Reserved]

§ 1424.8 Payment amounts.

(a) Eligible producer may be paid the amount specified in this section, subject to the availability of funds. Funds shall be considered available only to the extent determined appropriate by CCC. Unless otherwise determined by CCC, that amount shall be no more than $150 million in FY 2001 and no more than an additional $150 million in FY 2002.

(b) Eligible producer must sign an agreement to participate. Such an agreement must be signed during the designated sign-up period. Thereafter, producers must file a report of their production at all locations for the program year to date through the respective quarter for each such report. Such reports must comply with the terms of the agreement and these regulations.

(c) Persons will be eligible for payments only to the extent that their production of eligible energy from eligible inputs is, for the program year to date, as compared to the comparable portion of the previous year, in excess of their total comparable production at all locations. Producers will not be paid twice for the same increase and any decline in relative production between quarters will require a comparable refund as specified below. That is, for example, if a producer were to be paid, at the end of the first quarter, for an increase of 500 units of energy production, but by the end of the second quarter that producer's production, for the year to date, was down to a net increase for the year of 450 units, then a refund would be due for the loss of the corresponding 50 units of net extra production. For these purposes unless CCC shall agree otherwise in order to facilitate the program, ''all locations'' for these and other purposes within these

regulations shall mean any and all locations in which the producer had an interest now (in the current FY) or in the previous FY, irrespective of whether the producer still has such an interest in that facility. Eligibility determinations will be made on the basis of aggregating production figures from all such locations and shall include production by all persons at those locations for the current and preceding FY, not just the production of the producer. Also, the CCC may in the program agreement require that the producer certify the amount of the actual increased use of agricultural commodities for energy production at all such locations for the relevant period and make adjustment in the formulaic payments that would otherwise be made to the producer if there is a difference between that certification and the amount of increased commodity use as calculated under the formula.

(d) The submitted agreements filed during the sign-up period will require that the applicant set out the expected increase in production and other information as the agency may demand. Based on expected commodity prices, following the formula set out in this section, all such submissions will be assigned an expected value. Should the total expected value of all such agreements exceed the available funding, then a proration factor will be developed to factor the agreements down to the funding made available by CCC.

(e) Subject to the provisions of this section and conditions specified in the Agreement, a producer's payment eligibility shall be adjusted at the end of each quarter, and figured as follows:

(1) The extra production in energy from eligible inputs will be converted to gross payable bushels (or other applicable agricultural unit) by, unless otherwise determined by CCC:

(i) Allowing, as applicable, 1 bushel of corn for each increase of 2.5 gallons of ethanol;

(ii) Allowing, as applicable, 1 bushel of soybeans for each increase of 1.4 gallons of biodiesel production;

(iii) Such other method for other eligible agricultural commodities as CCC deems appropriate.

(2) The gross payable bushels, or other gross units, calculated under paragraph (e)(1) of this section shall then be converted to a net payable bushel (or other unit amount) by:

(i) For producers whose annual bioenergy production is less than 65 million gallons, allowing 1 net payable bushel for every 2.5 gross payable bushels of corn or soybeans, or by allowing a similar conversion in the event that there are other eligible agricultural commodities involved in the calculation;

(ii) For producers whose annual bioenergy production is equal to or more than 65 million gallons, allowing 1 net payable bushel for every 3.5 gross payable bushels of corn or soybeans, or by allowing a similar conversion in the event that there are other eligible commodities involved;

(3) The net payable bushel (or other unit) agricultural commodity amount calculated under paragraph (e)(2) of this section, shall be then converted to a gross payment by multiplying that commodity amount by the per unit value for the commodity determined as follows:

(i) For those agricultural commodities with established terminal market prices, the CCC will use the applicable terminal market price for the last day of the program quarter announced daily by the KCCO, FSA, adjusted by the county average differential for the county in which the plant is located and the applicable quality factors determined by CCC. For this purpose the terminal market and differential used by CCC in determining different values for different locations will, to the extent practical, be the same as that used for producers under other major CCC commodity programs for determining marketing loan gains and other matters.

(ii) For those agricultural commodities that do not, as determined by CCC, have acceptable established terminal prices, the price shall be as determined by CCC based on such market data as appears to be appropriate for a fair evaluation.

(4) The gross payment calculated under paragraph (e)(3) of this section shall be reduced to a net payment by multiplying the gross payment figure by the proration factor determined under paragraph (d) of this section.

(5) Subject to other provisions of this section, producers shall be paid the net current payment, if positive, determined for the first quarter.

(6) After the first quarter, adjustments shall be made based on changes in production. New or renewed increases shall be paid using the formula set out above using current per unit values. Refunds, when due, shall be due at the per unit values at which they were paid unless CCC determines otherwise.

(7) If despite or in the absence of a proration under paragraph (d) of this section funds shall not be sufficient to cover payments due for any quarter then CCC shall prorate, or further prorate, the claims in such manner as CCC deems fit.

(8) No producer may receive more than five percent of the available funding for this program and determinations of payment eligibility shall take that limit into account.

§ 1424.9 Reports required.

Once an eligible producer has submitted an Agreement, Form CCC–850, that producer shall file information for each bioenergy producing facility quarterly through the end of the applicable FY as specified by CCC.

§ 1424.10 Succession and control of facilities and production.

A person who obtains a facility which is under contract under this part may request permission to succeed to the program contract and CCC may grant such request if it is determined that permitting such succession would serve the purposes of the program. As determined to be appropriate, CCC may require the consent of the original party to such succession and likewise CCC may terminate a contract and demand a full refund of payments made if a contracting party loses control of a facility whose increased production is the basis of a program payment or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 1424.11 Maintenance and inspection of records.

For the purpose of verifying compliance with the requirements of this part, each eligible producer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that is within the control of such entity for not less than 3 years from the payment date.

§ 1424.12 Appeals.

(a) Any producer who is subject to an adverse determination made under this part shall have a right to appeal the determination by filing a written request with the Deputy Administrator at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250–0550.

(b) Any producer who believes that they have been adversely affected by a determination under this part must seek review with the Deputy Administrator within thirty days of such determination, unless provided with notice by FSA which provides a different time for appealing.

(c) Any producer who believes that they have been adversely affected by a determination by the Agency, must seek review with the Deputy Administrator before any other review may be requested within the Agency.

§ 1424.13 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:

(1) Adopted any scheme or device which tends to defeat the purpose of the program in this part;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the bioenergy producer's actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.

(c) Interest charged under this part shall at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such funds available. Such interest shall accrue from the date such payments were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations.

(d) CCC may waive the accrual of interest and or damages if CCC determines that the cause of the erroneous determination was not due to any action of the bioenergy producer.

(e) Any producer or person engaged in an act prohibited by this section and any producer or person receiving payment under this part shall be jointly and severally liable for any refund due under this part and for related charges.

(f) The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

(g) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 1403.

(h) Other limitations may apply.

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.

1425.1 Applicability.
1425.2 Administration.
1425.3 Definitions.
1425.4 Approval.
1425.5 Confidentiality.
1425.6 Approved CMA's.
1425.7 Suspension and termination of approval.
1425.8 Ownership and control.
1425.9 Open membership.
1425.10 Financial ratio requirement.
1425.11–1425.12 [Reserved]
1425.13 Uniform marketing agreement.
1425.14 Member business.
1425.15 Vested authority.
1425.16 Payment limitation.
1425.17 Eligible commodity and pooling.
1425.18 Distribution of proceeds.
1425.19 Member cooperatives.
1425.20 [Reserved]
1425.21 Records required.
1425.22 Inspection and investigation.
1425.23 Reports.
1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.
1425.25 Appeals.

AUTHORITY: 7 U.S.C. 1441 and 1421, 7 U.S.C. 7231–7237; and 15 U.S.C. 714b, 714c, and 714j.

SOURCE: 63 FR 17312, Apr. 9, 1998, unless otherwise noted.

§ 1425.1 Applicability.

This part sets forth the terms and conditions an approved Cooperative Marketing Association (CMA) must meet to obtain commodity marketing assistance loans (loans) and loan deficiency payments (LDP's) from CCC on behalf of its members. A CMA meeting these terms and conditions may obtain loans and LDP's for any eligible commodity for which a loan and LDP program is in effect.

§ 1425.2 Administration.

On behalf of CCC, the Farm Service Agency will administer the provisions of this part under the general direction and supervision of the Deputy Administrator for Farm Programs. In the field, the provisions of this part will be administered by the State and county FSA committees.

§ 1425.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in parts 718 of this title and parts 1421 and 1427 of this chapter shall also be applicable, except where those definitions conflict with the definitions in this section.

Active member is a member who has utilized the services offered by a CMA in one of the three preceding CMA fiscal years or such shorter period as may be provided in the CMA's articles of incorporation or bylaws.

Approved cooperative marketing association (CMA) is a cooperative approved by CCC to participate in loan and LDP programs for any authorized commodity.

Authorized commodity is a commodity for which a CMA is approved by CCC to obtain loans or LDP's. Commodities for which a CMA may be approved by CCC are barley, canola, corn, cotton, flaxseed, mustard seed, oats, rapeseed, rice, safflower, sorghum, soybeans, sunflower seed, and wheat.

Cooperative is a business owned and controlled by the producers who use its

services and operated under generally accepted cooperative principles.

Eligible commodity is a commodity which meets the commodity's eligibility requirements set forth in chapter XIV of this title, and is produced and delivered to the CMA from a producer eligible for loan or LDP.

Loan pool is any CMA pool containing commodities used by the CMA to obtain either loans or LDP's.

Market gain is the sum of loan rate, minus the repayment rate on loans repaid with less than the loan rate, plus for LDP's, the same rate, times the quantity of commodity. Market gains cannot exceed the producer's applicable payment limitation as set out in part 1400 of this chapter.

Member is a producer who:

(a) Has fully paid for membership stock or earned equity credits in the CMA;

(b) Has executed a uniform marketing agreement with the CMA; and

(c) Is entitled to all CMA membership rights.

§ 1425.4 Approval.

(a) For a cooperative to gain CMA status to participate in a marketing assistance loan or LDP program for the 1997 through 2002 crop years, a cooperative must submit an application for approval to CCC. An application must include:

(1) A completed Form CCC–846 indicating commodities for which it seeks approval;

(2) A balance sheet, dated within the last year, prepared for the cooperative and accompanied by a letter from an independent Certified Public Accountant, certifying that the balance sheet was prepared in accordance with generally accepted accounting principles;

(3) A copy of the articles of incorporation or articles of association and all marketing agreements for loan pools, together with a certification that this material is current;

(4) Resolutions made by the cooperative's board of directors stating the cooperative will abide by provisions of this part, the nondiscrimination provisions thereof, and all other related CCC policies;

(5) A detailed description of how proceeds from each loan pool will be distributed to members as provided for in § 1425.18;

(6) An executed form CCC–Cotton G, Cotton Cooperative Loan Agreement, by cooperatives applying for approval to participate in the cotton loan and LDP program; and

(7) Other information as requested by CCC concerning the organizational, operational, financial or any other aspect of the cooperative requested by CCC related to the cooperative's proposed methods of conducting CCC loan and LDP business.

(b) A CMA must submit, on an annual basis, the following information to CCC:

(1) A completed Form CCC–846–1, which shall disclose:

(i) The number of active and inactive CMA members;

(ii) The CMA's allocated equity;

(iii) The CMA's unallocated equity; and

(iv) Quantity of each loan pool commodity delivered to the CMA for marketing and the portion of such commodities received from active members during the prior year.

(2) The CMA's latest balance sheet. This balance sheet must be dated within the past year and be accompanied by a letter from an independent Certified Public Accountant certifying that the balance sheet was prepared in accordance with generally accepted accounting principles.

(c) A CMA shall furnish information to CCC within thirty calendar days relating to any:

(1) Change in its articles of incorporation and loan pool marketing agreements;

(2) Resolution affecting loan or LDP operations;

(3) Change to the CMA's name, address, phone number, or related data shown on the CCC–846–1;

(4) Change in loan pool operations with an explanation and justification; and

(5) Additional information CCC may request related to the CMA's continued approval by CCC.

(d) CCC may require a CMA to submit a new initial application instead of a recertification application when it

questions whether the CMA is operating according to documents previously submitted.

§ 1425.5 Confidentiality.

Information submitted to CCC related to trade secrets, financial or commercial operations, or the financial condition of a CMA, whether for initial approval or continued approval, shall be kept confidential by the officers, agents, and employees of CCC and the Department of Agriculture except as required to be disclosed by law.

§ 1425.6 Approved CMA's.

(a) CCC shall, in accordance with the provisions of this part, approve a CMA to obtain marketing assistance loans and LDP's.

(b) CCC may approve a CMA to participate in a marketing assistance loan and LDP program for the 1997 through 2002 crop as:

(1) Unconditionally approved; or

(2) Conditionally approved.

(c) If CCC determines a CMA is in substantial but not total compliance with the requirements of this part, CCC may make the approval conditional on CMA coming into full compliance within a reasonable period of time as specified in the notification of conditional approval.

(d) A CMA is approved to participate in a marketing assistance loan and LDP program until the CMA's approval is suspended or terminated by CCC.

§ 1425.7 Suspension and termination of approval.

(a) CCC may suspend a CMA from obtaining loans and LDP's when CCC determines the CMA has not:

(1) Operated according to the CMA's application for approval or its last recertification submission;

(2) Complied with applicable regulations;

(3) Corrected deficiencies of the CMA's operation as noted by CCC; or

(4) Violated any of its agreements with CCC.

(b) A suspension may be lifted when CCC determines the CMA has complied with all requirements for approval. When suspensions are not lifted within 1 year, or a shorter time period if so indicated in CCC's suspension notification, the CMA's approval automatically terminates.

(c) CCC may terminate a CMA's approval by giving the CMA written notice of the termination.

(d) A CMA may, when it does not have any marketing assistance loans outstanding, through written notice to CCC, voluntarily terminate its participation in a loan and LDP program.

(e) CCC may, on demand, call all outstanding CCC loans made to a suspended or terminated CMA. When loans are called, CCC will provide at least 10 calendar days written notice to the CMA. Commodities pledged as collateral for loans must be repaid by the date specified by CCC. If redemption is not made by the date specified, title to the commodity shall vest in CCC and CCC shall have no obligation to pay the commodity's market value above the principal amount of such loans.

§ 1425.8 Ownership and control.

(a) CMA's must be owned and controlled by active members of the CMA.

(b) The CMA must provide evidence that:

(1) Active members own more than 50 percent of its allocated equity; and

(2) A majority of directors are active members of the CMA or authorized representatives of active members.

(c) An applicant cooperative or a CMA, not under the ownership or control, of its active members, may be approved by CCC if it is able to establish that, by retiring the equity of its inactive members or by obtaining new members, it can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Open membership.

(a) The CMA shall provide CCC documented proof that the CMA admits every membership applicant who is eligible under the statute regulating the CMA.

(b) Notwithstanding paragraph (a) of this section, a CMA may refuse membership to an applicant whose admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the CMA.

§ 1425.10 Financial ratio requirement.

To be financially able to make advances to their members and to market their commodities, CMA's shall have a current ratio of at least 1 dollar of current assets for each 1 dollar of current liabilities (current ratio of 1:1 or better) on the balance sheet it submits to CCC with its initial application or annual recertification required in § 1425.4.

§§ 1425.11–1425.12 [Reserved]

§ 1425.13 Uniform marketing agreement.

(a) A CMA must enter into a uniform marketing agreement with each member who delivers a commodity to a loan pool.

(b) The identification number used by the member to report acreage on applicable farms to FSA must appear on the marketing agreement.

§ 1425.14 Member business.

(a) At least 50 percent of a crop of an authorized commodity acquired by, or delivered to, a CMA for marketing must be produced by its members for the CMA to obtain a loan or LDP for such crop. CCC may, for a period not to exceed 2 years, waive this requirement if:

(1) The CMA can establish to CCC that such authorization is necessary for the efficient operation of the CMA; and

(2) The CMA's plan, approved by CCC, will bring the CMA into compliance with the provisions of this section.

(b) Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.

The marketing agreement between the CMA and its members shall give the CMA the authority to pledge the commodity as collateral for a loan, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the CMA.

§ 1425.16 Payment limitation.

CMA's shall monitor market gains they receive from CCC on behalf of their members and not obtain market gains for a member above the member's payment limitation determined in accordance with part 1400 of this chapter.

§ 1425.17 Eligible commodity and pooling.

(a) A CMA may establish separate loan pools as needed for quantities of a commodity.

(b) Loans and, if applicable, LDP's will be available to CMA's for any eligible commodity in a loan pool as provided in paragraph (e) of this section and the beneficial interest provisions of parts 1421 and 1427 of this chapter.

(c) A pool shall be eligible for loans and LDP's if:

(1) All of the commodity in the pool is eligible for loans or LDP's, except as provided in paragraphs (d) and (e) of this section;

(2) The commodity was delivered by members to the CMA for their benefit;

(3) The commodity was delivered and the members are eligible for loans and LDP's;

(4) Members retain the right to share in marketing proceeds from the commodity in accordance with § 1425.18; and

(5) Members agreed to accept a payment of initial advances from the CMA in accordance with § 1425.18(a).

(d) Ineligible commodities may be included in eligible pools when:

(1) The CMA inadvertently included ineligible quantities based on grade, quality, bale weight or repacking in the case of cotton, or other factors; or

(2) There are eligibility discrepancies within FSA records, the producer has certified to the CMA that the commodity is eligible for loan, and there is no market gain or LDP involved in the loan pool for the crop year.

(e) A CMA may, for a period of time as specified in Handbook 1–CMA, include a commodity that is ineligible based on FSA records when the producer has certified to the CMA the commodity is eligible. In these instances, CCC specifies a time period during which CMA's may obtain loan or LDP's on the applicable quantity while the eligibility status is resolved.

If the final resolution is that the commodity was ineligible, the CMA must repay any loans outstanding with principal plus interest and any market gains obtained plus interest from the date of receiving the market gain through the repayment date.

(f) The CMA must have in inventory a quantity of commodity delivered by members of each class and grade at least equal to the quantity each class and grade pledged as loan collateral.

(g) Loans will be available to the CMA for the quantity of a farm-stored commodity that is, pursuant to such CMA marketing agreement with a member, part of the CMA's loan pool.

(h) A CMA shall have identity-preserved loan pool commodities stored in approved warehouses while the commodities are pledged as collateral for loan.

(i) Loan eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.

(j) Commodities pledged as collateral for CCC loans shall be free and clear of all liens and encumbrances based on a CMA's financial agreements or the CMA shall obtain a completed form CCC–679, Lien Waiver. When liens are applicable based on CMA financial agreements, the CMA shall provide CCC the completed CCC–679. CMA's shall not take any action to cause a lien or encumbrance to be placed on a commodity after a loan is approved.

(k) If a loan or LDP is obtained for any quantity in a loan pool, allocations of costs and expenses among separate pools for the commodity in the pool shall be made according to generally accepted accounting principles.

(l) A CMA shall not apply marketing losses from a commodity not used to obtain a loan or LDP against the marketing proceeds of a commodity used to obtain a loan or LDP.

(m) CMA's shall not carry forward losses from one loan pool and apply them against a subsequent loan pool without CCC's authorization. CCC may grant authorization when it determines that carrying forward the loss complies with CCC's loan and LDP program intent.

(n) The CMA is responsible to CCC for any loss related to commodities the CMA pledged as collateral for loan or used to obtain LDP related to:

(1) The CMA failing to comply with these regulations;

(2) Changes in quantity or quality of either warehouse or farm stored commodities; or

(3) Liens based on either the CMA's or its members' financial agreements.

§ 1425.18 Distribution of proceeds.

(a)(1) If CCC makes loans or LDP's for any quantity in a loan pool, the related proceeds shall be distributed to members participating in the pool:

(i) Based on the quantity and quality of the commodity delivered by each member;

(ii) Less any authorized charges for services performed or paid by the CMA necessary to condition the commodity or otherwise make the commodity eligible for loans or LDP's; and

(iii) Within 15 work days from the date the CMA receives loan or LDP proceeds from CCC, except when loans are redeemed within 15 work days of the date of the loan.

(2) CMA's may credit advances to its members made before loans and LDP's are obtained against the distribution of loan and LDP proceeds requirement in paragraph (a)(1)(iii) of this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, loan pool proceeds shall not be combined with non-loan pool proceeds and the CMA shall distribute loan pool proceeds according to the information it provided CCC in accordance with § 1425.4(b)(7).

(2) Sales proceeds from a loan pool may be combined with sales proceeds from other pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in the pools.

(3) Loan and LDP proceeds shall only be issued to members involved in pools used for loans or LDP's.

(4) When notified by CCC that loan and LDP distributions to a member must be reduced for a program year, farm, or crop, a CMA shall not make subsequent pool distributions and shall reimburse CCC for distributions previously issued, if applicable.

§ 1425.19 Member cooperatives.

A CMA may obtain loans or LDP's on behalf of a member cooperative when the member cooperative is itself a CMA operating in accordance with this part. Loans and LDP's are restricted based on the CMA obtaining the loan or LDP.

§ 1425.20 [Reserved]

§ 1425.21 Records required.

(a) A CMA shall maintain records for each loan or LDP commodity showing the quantity:

(1) Received from each member and nonmember;

(2) Eligible for loans and LDP's;

(3) By quality factors specified in the applicable commodity regulations including class, grade, and quality, where applicable; and

(4) Of unprocessed inventory broken down by items 1 through 3 above.

(b) Except as provided in paragraph (c) of this section, inventory shall be allocated in the following manner until all inventory in a loan pool is depleted:

(1) For processed commodities, the pool's inventory shall be adjusted when the commodity is withdrawn from inventory for processing; and

(2) For commodities that are not processed, the pool's inventory shall be allocated to the pool and the pool's inventories adjusted when the commodity is shipped.

(c) Records of loan and non-loan pool dispositions do not have to be maintained separately when sales proceeds from pools are allocated according to the quantity and quality of commodity in the pools.

§ 1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the CMA and subsidiaries shall be maintained for five years after the applicable crop year and shall be available to CCC for inspection and examination at all reasonable times.

(b) At any time after an application is received, CCC shall have the right to examine all books, documents, papers, and determine whether the CMA is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles association, and agreements with producers, the representations made by the CMA in its application for approval, and, where applicable, its agreements with CCC.

§ 1425.23 Reports.

(a) CMA's shall annually provide CCC a report of all commodity deliveries involved in loans and LDP's by FSA farm number for each member.

(b) When requested by CCC, CMA's shall report market gains received on behalf of each member.

§ 1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560–0040.

§ 1425.25 Appeals.

A CMA may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title.

PART 1427—COTTON

Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs.

Sec.

1427.1 Applicability.
1427.2 Administration.
1427.3 Definitions.
1427.4 Eligible producer.
1427.5 General eligibility requirements.
1427.6 Disbursement of loans.
1427.7 Maturity of loans.
1427.8 Amount of loan.
1427.9 Classification of cotton.
1427.10 Approved storage.
1427.11 Warehouse receipts.
1427.12 Liens.
1427.13 Fees, charges and interest.
1427.14 [Reserved]
1427.15 Special procedure where funds are advanced.
1427.16 Reconcentration of cotton.
1427.17 Custodial offices.
1427.18 Liability of the producer.
1427.19 Repayment of loans.
1427.20 Handling payments and collections not exceeding $9.99.
1427.21 Settlement.

1427.22 Death, incompetency, or disappearance.
1427.23 Cotton loan deficiency payments.
1427.24 [Reserved]
1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.
1427.26 Paperwork Reduction Act assigned numbers.

Subpart B—Regulations for the Upland Cotton First Handler Marketing Certificate Program.

1427.50 Applicability.
1427.51 Administration.
1427.52 Definitions.
1427.53 Eligible upland cotton.
1427.54 Eligible first handlers.
1427.55 Upland cotton first handler agreement.
1427.56 Form of payment.
1427.57 Payment rate.
1427.58 Payment.

Subpart C—Regulations for the Upland Cotton User Marketing Certificate Program.

1427.100 Applicability.
1427.101 Administration.
1427.102 Definitions.
1427.103 Eligible upland cotton.
1427.104 Eligible domestic users and exporters.
1427.105 Upland Cotton Domestic User/Exporter Agreement.
1427.106 Form of payment.
1427.107 Payment rate.
1427.108 Payment.

Subpart D—Regulations for the Recourse Seed Cotton Loan Program

1427.160 Applicability.
1427.161 Administration.
1427.162 Definitions.
1427.163 Disbursement of loans.
1427.164 Eligible producer.
1427.165 Eligible seed cotton.
1427.166 Insurance.
1427.167 Liens.
1427.168 [Reserved]
1427.169 Fees, charges, and interest.
1427.170 Quantity for loan.
1427.171 Approved storage.
1427.172 Settlement.
1427.173 Foreclosure.
1427.174 Maturity of seed cotton loans.
1427.175 Liability of the producer.

Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters

1427.1081 General statement and administration.
1427.1082 Basic standards.
1427.1083 Bonding requirements for net worth.
1427.1084 Examination of warehouses.
1427.1085 Exceptions.
1427.1086 Approval of warehouse, requests for reconsideration.
1427.1087 Exemption from requirements.
1427.1088 Contract fees.
1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

Subpart F—Cottonseed Payment Program

1427.1100 Applicability.
1427.1101 Administration.
1427.1102 Definitions.
1427.1103 Eligible cottonseed.
1427.1104 Eligible first handlers.
1427.1105 Payment application.
1427.1106 Total available program funds.
1427.1107 Applicant payment quantity.
1427.1108 Total payment quantity.
1427.1109 Payment rate.
1427.1110 Payment calculation and form.
1427.1111 Liability of first handler.

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

1427.1200 Applicability.
1427.1201 Administration.
1427.1202 Definitions.
1427.1203 Eligible ELS cotton.
1427.1204 Eligible domestic users and exporters.
1427.1205 ELS Cotton Domestic User/Exporter Agreement.
1427.1206 Form of payment.
1427.1207 Payment rate.
1427.1208 Payment.

AUTHORITY: 7 U.S.C. 7231–7235–7237; 15 U.S.C. 714b and 714c; Sec. 813, Pub. L. 106–78; Sec.204(e), Pub. L. 106–224.

Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs.

SOURCE: 61 FR 37601, July 18, 1996, unless otherwise noted.

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 1996 through 2002 crops of upland cotton and extra long staple cotton. These regulations set forth the terms and conditions under which the nonrecourse cotton loan program and the loan deficiency payment program shall be administered by the Commodity Credit Corporation (CCC). Additional terms and conditions shall

be set forth in the note and security agreement and loan deficiency payment application which must be executed by a producer to receive loans and loan deficiency payments.

(b) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the nonrecourse cotton loan and loan deficiency payment programs are available in State and county Farm Service Agency (FSA) offices (State and county offices, respectively). The forms for use in connection with the programs in this subpart shall be prescribed by CCC.

(c) Loans and loan deficiency payments shall not be available for any cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(d) Notwithstanding provisions of this subpart and subchapter:

(1) For commodities produced during the 1999 crop year, the $75,000 per person total limitation on all commodities together on the sum of marketing loan gains on loan made under this part and on loan deficiency payments with respect to loans under this part, shall not apply, but, rather, such limit shall be $150,000 per person.

(2) For eligible cotton produced in the 1999 crop year, a producer may receive with respect to cotton, a marketing loan gain in connection with loans made under this part or loan deficiency payments in connection with the administration of loans under this part even though the cotton has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the cotton;

(ii) The person seeking the payment is the actual producer of the cotton and had beneficial interest in the cotton at the time of the operative marketing, for cotton to which paragraph (d)(2)(iii) of this section applies, or the time at which the cotton was redeemed in the case of cotton to which paragraph (d)(2)(iv) of this section applies;

(iii) For cotton that was previously placed under loan, the payment is made solely as marketing loan gain in which case the rate to be paid will be determined as of the date of the redemption;

(iv) For cotton not covered by paragraph (d)(2)(iii) of this section, the producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date that the producer marketed or lost beneficial interest in the cotton;

(v) Unless otherwise allowed by the Deputy Administrator, the producer marketed the cotton prior to February 16, 2000.

(e) Not withstanding provisions of this subpart and subchapter:

(1) Eligible cotton produced during the 2000 crop year on a farm that is not covered under a production flexibility contract, as defined in part 1412 of this chapter, are eligible for a loan deficiency payment to eligible producers in accordance with § 1427.4.

(2) With respect only to loan deficiency payments for eligible cotton produced in the 2000 crop year on a farm not covered by a production flexibility contract, a producer may receive with respect to such cotton, a loan deficiency payment in connection with the administration of loans under this part even though the cotton has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the cotton;

(ii) The person seeking the payment is the actual producer of the cotton and had beneficial interest in the cotton at the time of the operative marketing;

(iii) The producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date the producer marketed or lost beneficial interest in the cotton;

(iv) Unless otherwise allowed by the Deputy Administrator for Farm Programs, FSA, the cotton was harvested and marketed on or before December 4, 2000.

[61 FR 37601, July 18, 1996, as amended at 65 FR 7954, Feb. 16, 2000; 65 FR 13865, Mar. 15, 2000; 65 FR 65715, Nov. 2, 2000]

§ 1427.2 Administration.

(a) The nonrecourse loan and loan deficiency payment programs which are applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, (Administrator, FSA), or a designee and shall be carried out by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the cotton loan and loan deficiency payment programs or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the nonrecourse cotton loan or loan deficiency payment programs.

(f) A representative of CCC may execute loan note and security agreements and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, is null and void.

§ 1427.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in parts 718 of this title and 1412 of this chapter shall also be applicable.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved in accordance with part 1425 of this chapter which has executed Form CCC-Cotton G, Cotton Cooperative Loan Agreement.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton means upland cotton and extra loan staple cotton meeting the definition set forth in the definitions of ''upland cotton'' and ''extra long staple (ELS) cotton'' in this section, respectively, and excludes cotton not meeting such definitions.

Extra long staple (ELS) cotton means any of the following varieties of cotton which is produced in the United States and is ginned on a roller gin:

(1) American-Pima;

(2) Sea Island;

(3) Sealand;

(4) All other varieties of the Barbadense species of cotton, and any hybrid thereof; and

(5) Any other variety of cotton in which one or more of these varieties predominate.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loans means a nonrecourse loan executed on Form CCC—Cotton A,

Cotton Producer's Note and Security Agreement.

Form G loans means a nonrecourse loan to a CMA on eligible cotton delivered to the CMA by eligible members of the CMA.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency payment proceeds;

(3) Handling reconcentration of cotton in accordance with § 1427.16;

(4) Accepting loan repayments;

(5) Handling documents involved with forfeiture of loan collateral to CCC; and

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Lint cotton means cotton which has passed through the ginning process.

Seed cotton means cotton which has not passed through the ginning process.

Servicing agent bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton which one or more of these varieties predominate.

Warehouse receipt means a receipt issued with respect to a bale of cotton by a warehouse with an existing cotton storage agreement, approved by CCC, in accordance with §§ 1427.1081 through 1427.1089, that is:

(1) A negotiable, machine card type warehouse receipt that is pre-numbered and pre-punched;

(2) An electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations which are approved by FSA or CCC to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

§ 1427.4 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, CMA, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12 and 718 of this title, and parts 1405 and 1412 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans and loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note and security agreement or loan deficiency payment application signed by the minor is co-signed by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) Two or more producers may obtain a single joint loan or loan deficiency payment with respect to the eligible cotton if the cotton is jointly owned by such producers. The cotton in a bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(e) Loans may be made to a warehouse operator who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouse operator on cotton produced by such warehouse operator only in those States where the issuance and pledge of such warehouse receipts are valid under State law.

(f) A CMA may obtain loans and loan deficiency payments on eligible cotton on behalf of their members who are eligible to receive loans or loan deficiency payments with respect to a crop of cotton. For purposes of this subpart, the term ''producer'' includes a CMA.

§ 1427.5 General eligibility requirements.

(a) To receive loans or loan deficiency payments for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested.

(1) Form A loan documents or loan deficiency payment applications must be signed by the producer and mailed or delivered to applicable county office or loan servicing agent within 15 calendar days after the producer signs such documents and within the period of loan availability. A producer, except for a CMA, must request loans and loan deficiency payments:

(i) At the county office which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced; or

(ii) From a loan servicing agent.

(2) Form G loan documents and requests for loan deficiency payments by a CMA must be signed by the CMA and delivered to CCC or the servicing agent bank within the period of loan availability.

(b) For a bale of cotton to be eligible for a loan or loan deficiency payment, the bale must:

(1) Be tendered to CCC by an eligible producer;

(2) Be in existence and good condition, be covered by fire insurance, be stored in a warehouse with an existing cotton storage agreement in accordance with §§ 1427.1081 through 1427.1089 at the time of disbursement of the loan or loan deficiency payment proceeds, except as provided in § 1427.23(f), and be stored in approved storage as determined in accordance with § 1427.10;

(3) Be represented by a warehouse receipt meeting the requirements of § 1427.11, except as provided in § 1427.23(a)(4);

(4) Not be false-packed, water-packed, mixed-packed, re-ginned, or repacked;

(5) Not be compressed to universal density at a warehouse where side pressure has been applied;

(6) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a loan or to obtain a loan deficiency payment;

(7) Not have been previously sold and repurchased or pledged as collateral for a CCC loan and redeemed except as provided in § 1427.172(b)(4);

(8) Not be cotton for which a loan deficiency payment has been previously made;

(9) Weigh at least 325 pounds net weight;

(10) Be packaged in materials which meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America for the applicable crop year or which are identified and approved by the Joint Cotton Industry Bale Packaging Committee as experimental packaging materials for the applicable crop year.

(i) Copies of the applicable crop year specifications for cotton bale packaging materials published by the Joint Cotton Industry Bale Packaging Committee are available upon request at

the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 4089 A, 1400 Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday.

(ii) Information with respect to experimental packaging material may be obtained from the Joint Cotton Industry Bale Packaging Committee.

(11) Be ginned by a ginner:

(i) Who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehouse operator the tare weight; and

(ii) Who has entered into CCC–809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) and;

(12) Be production from acreage that has been reported timely in accordance with part 718 of this title.

(c) In addition to the requirements of paragraph (b), for ELS cotton the bale must:

(1) Be a Grade and staple length specified in the schedule of loan rates for ELS cotton;

(2) Not have a micronaire reading of 2.6 or less; and

(3) Not have noted on the classing record the presence of spindle twist, preparation, grass, oil, and/or other extraneous matter.

(d) In addition to the requirements of paragraph (b), for upland cotton the bale must:

(1) Have been produced on a farm with a production flexibility contract in accordance with part 1412 of this chapter;

(2) Have been graded by using a High Volume Instrument;

(3) Be a grade, staple length, and leaf specified in the schedule of premiums and discounts for grade, staple, and leaf for upland cotton;

(4) Have a strength reading greater than 18 grams per tex, rounded to whole grams;

(5) Have a micronaire specified in the schedule of micronaire premiums and discounts for upland cotton;

(6) Have a extraneous matter specified in the schedule of discounts for extraneous matter for upland cotton; and

(e)(1) To be eligible to receive loans or loan deficiency payments, a producer must have the beneficial interest in the cotton which is tendered to CCC for a loan or loan deficiency payment. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer and a former producer whom the producer tendering the cotton to CCC has succeeded had such an interest in the cotton. Cotton obtained by gift or purchase shall not be eligible to be tendered to CCC for loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan shall be eligible for loans whether succession to the cotton occurs before or after harvest as long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the cotton if the producer retains control, title, and risk of loss in the cotton, including the right to make all decisions regarding the tender of the cotton to CCC for loans or loan deficiency payments and does any or all of the following:

(i) Executes an option to purchase whether or not a payment is made by the potential buyer for such option to purchase with respect to such cotton if all other eligibility requirements are met and the option to purchase contains the following provision:

Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR part 1427, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not pay to the producer any advance payment amount to enter into such contract, except as provided in part 1425 of this chapter; or

(iii) Executes Form CCC–605, Designation of Agent. Such designation:

(A) Allows the producer to authorize an agent or subsequent agent to redeem all or a portion of the cotton pledged as collateral for a loan;

(B) Identifies the warehouse receipts for which the authorization is given;

(C) Expires upon maturity of the loan;

(D) Allows agents so designated by the producer to designate a subsequent agent by endorsement of the form by the agent;

(E) Must be presented at the time the loan is repaid at the county office or loan servicing agent where the loan originated if the agent or subsequent agent exercises any authority granted by the producer; and

(F) May be canceled by the producer by providing the custodial office a written request signed and dated by the producer showing the name of the agent, the loan number, and the bales applicable to the Form CCC–605. The effective date of the cancellation shall be the date the request is received by the custodial office.

(3) If loans or loan deficiency payments are made available to producers through a CMA, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the CMA or its member cooperative, except as otherwise provided in this section. Cotton delivered to such a CMA shall not be eligible to receive a loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(f) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper.

(g) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

[61 FR 37601, July 18, 1996, as amended at 62 FR 19023, Apr. 18, 1997]

§ 1427.6 Disbursement of loans.

(a) Disbursement of loans to individual producers may be made by:

(1) County offices;

(2) Loan servicing agent; or

(3) An approved cotton clerk who has entered into a written agreement with CCC on Form CCC–810.

(b) Loan proceeds may be disbursed by CCC or a servicing bank agent bank to CMA's.

(c) The loan documents shall not be presented for disbursement unless the cotton covered by the mortgage or pledged as security is eligible in accordance with § 1427.5. If the cotton was not eligible cotton at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.7 Maturity of loans.

(a)(1) Form A loans and Form G loans mature on demand by CCC and no later than the last day of the 10th calendar month from the first day of the month in which the loan or loan advance is disbursed.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 30 days in advance of the accelerated maturity date.

(b) If the loan is not repaid by the loan maturity date, title to the cotton shall vest in CCC the day after such maturity date and CCC shall have no obligation to pay for any market value which such cotton may have in excess

of the amount of the loan, plus interest and charges.

§ 1427.8 Amount of loan.

(a) The loan rates for crops of upland cotton and ELS cotton will be determined and announced by CCC and made available at State and county offices.

(b) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(c) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (b) by the applicable loan rate.

(d) CCC will not increase the amount of the loan made with respect to any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made with respect to the weight of the bale or the classification for the bale, such error may be corrected.

§ 1427.9 Classification of cotton.

(a) References made to ''classification'' in this subpart shall include grade, staple length, and micronaire, and for upland cotton, leaf, extraneous matter, and strength readings. All cotton tendered for loan must be classed by an Agricultural Marketing Service (AMS) Cotton Classing Office (Cotton Classing Office) or other entity approved by CCC and tendered on the basis of such classification.

(b) An AMS cotton classification or other entity's classification acceptable by CCC showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples under the Smith-Doxey program.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse shall sample such cotton and forward the samples to the Cotton Classing Office or other entity approved by CCC serving the district in which the cotton is located. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the Cotton Classing Office or other entity approved by CCC.

(d) If a sample has been submitted for classification, another sample shall not be drawn, except for a review classification.

(e) Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value.

(f) If a review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

§ 1427.10 Approved storage.

(a) Eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC.

(1) Persons desiring approval of their facilities should communicate with the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within such warehouse.

(c) Warehouse charges paid by a producer will not be refunded by CCC.

(d) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1427.23.

§ 1427.11 Warehouse receipts.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts

meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt or are otherwise acceptable to CCC. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Be dated on or prior to the date the producer signs the note and security agreement.

(b) Warehouse receipts, in accordance with § 1427.3, when issued as block warehouse receipts will be accepted when authorized by CCC only if the owner of the warehouse issuing the block warehouse receipt owns the cotton represented by the block warehouse receipt and the warehouse is not licensed under the U.S. Warehouse Act.

(c)(1) Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if:

(i) The gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC; and

(ii) Gin weights are permitted by the licensing authority for the warehouse.

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,
(Name of warehouse),
By (Signature or initials),
Date.

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(d) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must indicate the receiving charges and include a charge for new set of ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouse are normally compressed in transit, the warehouse receipt must show the bale ties are not suitable for reuse when the bale is compressed and charges will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(f) In any case where loan collateral is forfeited, any unpaid storage or receiving charges will be paid to the warehouse by CCC after loan maturity or as soon as practicable after the cotton is ordered shipped by CCC.

(g) The warehouse receipt must show the compression status of the bale; i.e., flat, modified flat, standard, gin standard, standard density (short), gin universal, universal density (short), or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

[61 FR 37601, July 18, 1996, as amended at 62 FR 19023, Apr. 18, 1997]

§ 1427.12 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained before disbursement even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to a loan servicing agent, at a rate determined by CCC. Any such fee shall be in addition to any cotton clerk fee paid to a cotton clerk in accordance with paragraph (b) of this section. The amount of such fees is available in State and county offices and are shown on the note and security agreement and shall be deducted from the loan proceeds.

(b) Cotton clerks may only charge fees for the preparation of loan or loan deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available in State and county offices and is shown on the note and security agreement.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of upland cotton which has been redeemed in accordance with § 1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

(d) For each crop of upland cotton, the producer, as defined in the Cotton Research and Promotion Act (7 U.S.C. Chapter 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount; and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

(e) If the producers elects to forfeit the loan collateral to CCC, the producer shall pay to CCC, at the rates that are specified in the storage agreement between the warehouse and CCC, the following accrued warehouse charges:

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the period the cotton was pledged as collateral for the loan; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in § 1427.11.

§ 1427.14 [Reserved]

§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on eligible cotton to be placed under loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) If such person or firm is entitled to reimbursement from the proceeds of the loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments; and

(2) To loan or loan deficiency payment documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan, except for:

(i) Authorized cotton clerk fees;

(ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC; and

(iii) CCC loan service charges.

(c)(1) All loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the loans or loan deficiency payments, except for CCC loan service charges and research and promotion fees, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan or loan deficiency payment advances or to such financial

institution and such person or firm as joint payees; or

(ii) The person, firm, or financial institution which made the loan or loan deficiency payment advances to the producers.

(2) The documents shall be accompanied by Form CCC–825, Transmittal Schedule of Loan and Loan Deficiency Payment Documents, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the loan or loan deficiency payment advance. The Form CCC–825 shall show the amounts invested by the person, firm, or financial institution in the loans or loan deficiency payments.

(3) Upon receipt of the loan or loan deficiency payment documents and Form CCC–825, the county office will stamp one copy of the Form CCC–825 to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) County offices will review the loan or loan deficiency payment documents prior to disbursement and will return to the person, firm, or financial institution any documents determined not to be acceptable because of errors or illegibility. County offices will disburse the loans or loan deficiency payments for which loan or loan deficiency payment documents are acceptable by issuance of one check to the payee indicated on the applicable form and will mail the check to the address shown for such payee on the applicable form with a copy of Form CCC–825. The Form CCC–825 will show the date of disbursement by a county office and amount of interest earned by the person, firm, or financial institution.

(e) The person, firm, or financial institution shall be deemed to have invested funds in the loans or loan deficiency payment as of the date loan or loan deficiency payment documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) Interest will be computed on the total amount invested by the person, firm, or financial institution in the loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by a county office.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by county offices after the end of the month.

§ 1427.16 Reconcentration of cotton.

(a) CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC.

(b) CCC may reconcentrate the cotton pledged for the loan from one CCC-approved warehouse to another with the written consent of the producer and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area. However, if CCC determines such loan cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained.

(1) The county office, loan servicing agent, or CMA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office.

(2) Any fees, costs, or expenses incident to such actions shall be charges against the cotton.

(3) After the cotton is reconcentrated, the Kansas City Commodity Office shall obtain new warehouse receipts, allocate to individual bales, shipping and other charges incurred against the cotton, and return new

warehouse receipts and reconcentration charges applicable to each bale to the county office, loan servicing agent, or CMA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

§ 1427.17 Custodial offices.

Forms CCC-Cotton A and CCC-Cotton A–1, collateral warehouse receipts and related documents will be maintained in the custody of CCC, the county office, the loan servicing agent, or the servicing agent bank, whichever disbursed the loan evidenced by such documents.

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan, or disposes of or moves the loan collateral without the prior written approval of CCC, such loan or loan deficiency payment shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts;

(v) Liquidated damages in accordance with paragraph (e); and

(vi) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1427.19.

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan or loan deficiency payment is less than the amount required in accordance with this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and the regulations set forth in this subpart. Each such producer shall also remain liable for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application with respect to the producer's claimed share in such cotton after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of Form CCC-Cotton A, Form CCC-Cotton AA, or Form CCC–709, as applicable, liquidated damages shall be

assessed on the quantity of the cotton which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(f) For first and second offenses, if CCC determines that a producer acted in good faith when the violation occurred, CCC shall:

(1) Require repayment of the loan principal and charges, plus interest applicable to the loan quantity affected by the violation or for loan deficiency payment, the loan deficiency payment amount applicable to the loan deficiency quantity involved with the violation, and charges plus interest from the date the loan deficiency payment was made; and

(2) Assess liquidated damages in accordance with paragraph (e);

(3) If the producer fails to pay such amounts within 30 calendar days from the date of notification, CCC shall call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(g) For cases other than first or second offenses, or any offense for which CCC cannot determine good faith when the violation occurred, CCC shall:

(1) Assess liquidated damages in accordance with paragraph (e); and

(2) Call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, and with respect to a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(h) If the county committee acting on behalf of CCC determines that the producer has committed a violation in accordance with paragraph (e), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee; and

(2) Administrative actions will be taken in accordance with paragraph (f) or (g).

(i) If the loan is called in accordance with this section, the producer must repay the loan at principal and charges, plus interest and may not repay the loan at the lower of the loan repayment rate in accordance with § 1427.19 or utilize the provisions of part 1401 of this chapter with respect to such loan.

(j) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (e) may be waived as determined by CCC.

§ 1427.19 Repayment of loans.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer or agent or subsequent agent authorized on Form CCC–605 may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) A producer or agent or subsequent agent authorized on Form CCC–605, may repay the loan amount for one or more bales of cotton pledged as collateral for a loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or servicing agent bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1400 of this chapter.

(f) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

(g) Notwithstanding any other provision of this section, CCC will not accept repayment of upland cotton at a rate based on the adjusted world price beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a non-workday, such loan repayments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

(h) If the upland cotton pledged as collateral is eligible to be repaid at a rate less than the loan level and charges, plus interest, and the adjusted world price determined in accordance with § 1427.25 is:

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605 the warehouse storage charges which have accrued, with respect to the cotton pledged as collateral for such loan, during the period the cotton was pledged for loan;

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges, that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605 that portion of the warehouse storage charges, that accrued during the period the cotton was pledged for loan, that are determined to be necessary to permit the loan to be repaid at the adjusted world price without regard to any warehouse charges that accrued before the cotton was pledged for loan; or

(3) Above the national average loan rate by as much as or more than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC shall not pay any of the accrued warehouse storage charges.

§ 1427.20 Handling payments and collections not exceeding $9.99.

To avoid the administrative costs of making small payments and handling small accounts, amounts of $9.99 or less will be paid to the producer only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1427.21 Settlement.

(a) The settlement of loans shall be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC.

(b) Settlements made by CCC with respect to eligible cotton which are acquired by CCC which are stored in an approved warehouse shall be made on the basis of the entries set forth on the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall take title to the cotton in accordance with § 1427.7(b).

§ 1427.22 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who

is entitled to the payment of any proceeds in settlement of a loan or loan deficiency payment, payment shall, upon proper application to the county office or loan servicing agent which disbursed the loan or loan deficiency payment, be made to the person or persons who would be entitled to such producer's payment as provided in the regulations entitled Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, part 707 of this title.

§ 1427.23 Cotton loan deficiency payments.

(a) Producers may obtain loan deficiency payments for 1996 through 2002 crops of upland cotton in accordance with this section.

(b) In order to be eligible to receive such loan deficiency payments, the producer of the upland cotton must:

(1) Comply with all of the upland cotton loan eligibility requirements in accordance with this subpart;

(2) Agree to forgo obtaining such loans;

(3) File a request for payment for a quantity of eligible cotton in accordance with § 1427.5(a) on Form CCC–Cotton AA, Form CCC–709, or other form approved by CCC;

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) Provide classing information for such quantity in accordance with § 1427.9; and

(6) Otherwise comply with all program requirements.

(c) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a loan.

(d) The loan deficiency payment rate for a crop of upland cotton shall be the amount by which the loan rate determined for a bale of such crop exceeds the adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the request is received by the county office, loan servicing agent, or servicing agent bank.

(e) The total amount of any loan deficiency payments that a person may receive is subject to part 1400 of this chapter.

(f) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as specified in accordance with § 1427.5(c) on the date the cotton was ginned, the loan deficiency payment rate applicable to such cotton will be the loan deficiency payment rate based on the date the cotton was ginned. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with § 1427.5.

(g) Notwithstanding any other provision of this section, CCC will not accept applications for loan deficiency payments that specify the payment rate beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a non-workday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

§ 1427.24 [Reserved]

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton shall be determined by CCC as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted

for M 1 3/32 inch cotton C.I.F. northern Europe.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward shipment price) are available for growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

(i) Weeks 1 and 2: (2 × Northern Europe current price) + Northern Europe forward price/3.

(ii) Weeks 3 and 4: Northern Europe current price + Northern Europe forward price/2.

(iii) Weeks 5 and 6: Northern Europe current price + (2 × Northern Europe forward price)/3.

(iv) Week 7 through July 31: Northern Europe forward price.

(3) The prevailing world market price for upland cotton as determined in accordance with paragraphs (a)(1) or (a)(2) of this section shall hereinafter be referred to as the ''Northern Europe price.''

(4) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by CCC.

(b) The prevailing world market price for upland cotton, adjusted in accordance with paragraph (c) of this section (adjusted world price), shall be applicable to the 1996 through 2002 crops of upland cotton.

(c) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with paragraph (a) of this section, adjusted as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1 3/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1 1/16 inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton (U.S. base quality) by deducting the difference, as announced by CCC, between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9,

strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

(3) The price determined in accordance with paragraph (c)(2) shall be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for a crop of upland cotton of the U.S. base quality, as announced by CCC.

(4)(i) The prevailing world market price, as adjusted in accordance with paragraphs (c)(1) through (c)(3), may be further adjusted if it is determined that:

(A) Such price is less than 115 percent of the current crop-year loan level for U.S. base quality cotton, and

(B) The Friday through Thursday average price quotation for the lowest-priced United States growth as quoted for M 1 3/32 inch cotton C.I.F. northern Europe (U.S. Northern Europe price) is greater than the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

(ii) During the period when both current shipment prices and forward shipment prices are available for growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the U.S. Northern Europe price provided in paragraph (c)(4)(i)(B) shall be determined as follows: Beginning with the week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1 3/32 inch cotton C.I.F. northern Europe (U.S. Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth quoted for M 1 3/32 inch cotton C.I.F. northern Europe (U.S. Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the average of the U.S. Northern Europe current price and the average of the U.S. Northern Europe forward price are available, the result calculated by the following procedure:

(A) Weeks 1 and 2: (2×U.S. Northern Europe current price)+(U.S. Northern Europe forward price) /3.

(B) Weeks 3 and 4: (U.S. Northern Europe current price)+(U.S. Northern Europe forward price) /2.

(C) Weeks 5 and 6: (U.S. Northern Europe current price)+(2×U.S. Northern Europe forward price) /3.

(D) Week 7 through July 31: U.S. Northern Europe forward price.

(iii) In determining the U.S. Northern Europe price as provided in paragraphs (c)(4)(i)(B) and (c)(4)(ii):

(A) If quotes for either the U.S. Memphis territory or the California/Arizona territory are not available for any week, the available quotations will be used.

(B) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used.

(C) If no quotes are available for either the U.S. Memphis territory or the California/Arizona territory during the Friday through Thursday period, no adjustment will be made.

(iv)(A) The adjustment shall be based on some or all of the following data, as available:

(*1*) The U.S. share of world exports;

(*2*) The current level of cotton export sales and shipments; and

(*3*) Other data determined by CCC to be relevant in establishing an accurate prevailing world market price, adjusted to United States quality and location.

(B) The adjustment may not exceed the difference between the U.S. Northern Europe price, as determined in paragraphs (c)(4)(i) through (c)(4)(iii), and the Northern Europe price, as determined in paragraph (a).

(d) In determining the average difference in the 52-week period as provided in paragraph (c)(1):

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the

average price of M 13/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If a Thursday price quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 13/32 inch cotton C.I.F. northern Europe is not available for any week, CCC:

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 13/32 inch, cotton C.I.F. northern Europe and the average price of M 13/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets for that week, or

(ii) May not take that week into consideration.

(3) If Thursday price quotations for any week are not available for either,

(i) Both the Memphis territory and the California/Arizona territory as quoted for M 13/32 inch cotton C.I.F. northern Europe, or

(ii) The average price of M 13/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted in the designated U.S. spot markets, that week will not be taken into consideration.

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c), and the amount of the additional adjustment as determined in accordance with paragraph (f), shall be announced, to the extent practicable, at 5 p.m. eastern time each Thursday continuing through the last Thursday of July 2003. In the event that Thursday is a non-workday, the determination will be announced, to the extent practicable, at 8 a.m. eastern time the next workday. The adjusted world price and the amount of the additional adjustment will be effective upon announcement and will remain in effect for a period as announced by CCC.

(f)(1)(i) The adjusted world price, as determined in accordance with paragraph (c), shall be subject to further adjustments as provided in this section with respect to all qualities of upland cotton eligible for loan except the following grades of upland cotton with a staple length of 1 1/16 inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade and Staple length must be determined in accordance with §1427.9. If no such official classification is presented, the coarse count adjustment shall not be made.

(2) The adjustment for upland cotton provided for by paragraph (f)(1) shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

(A) During the period when only one daily price quotation for each growth quoted for ''coarse count'' cotton C.I.F. northern Europe is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton C.I.F. northern Europe; or

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for ''coarse count'' cotton C.I.F. northern Europe, the result calculated by the following procedure:

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton C.I.F. northern Europe (Northern Europe coarse count current price) and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton C.I.F. northern Europe (Northern Europe coarse count forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(*1*) Weeks 1 and 2: (2 ''×'' Northern Europe coarse count current price) + Northern Europe coarse count forward price/3;

(*2*) Weeks 3 and 4: Northern Europe coarse count current price + Northern Europe coarse count forward price/2;

(*3*) Weeks 5 and 6: Northern Europe coarse count current price + (2 × Northern Europe coarse count forward price)/3; and

(*4*) Week 7 through July 31: The Northern Europe coarse count forward price, minus:

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton and the loan rate for a crop of upland cotton for SLM 1 1/16 inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton.

(iii) The result of the calculation as determined in accordance with this paragraph (f)(2) shall hereinafter be referred to as the ''Northern Europe coarse count price.''

(3) With respect to the determination of the Northern Europe coarse count price in accordance with paragraph (f)(2)(i):

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be taken into consideration; and

(iii) If quotes for three growths are not available for at least three days in the 5-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with paragraph (f)(2) for the latest available week will continue to be applicable.

(g) If the 6-week transition periods from using current shipment prices to using forward shipment prices in the determination of the Northern Europe price in accordance with paragraph (a)(2), and the Northern Europe coarse count price in accordance with paragraph (f)(2)(i)(B) do not begin at the same time, CCC shall use either current shipment prices, forward shipment prices, or any combination thereof, to determine the Northern Europe price and/or the Northern Europe coarse count price used in the determination of the adjustment for upland cotton provided for by paragraph (f)(1) and determined in accordance with paragraph (f)(2), in order to prevent distortions in such adjustment.

(h) The adjusted world price, determined in accordance with paragraph (c), shall be subject to further adjustments, as determined by CCC based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the loan program for a crop of upland cotton.

[61 FR 37601, July 18, 1996, as amended at 65 FR 36563, June 8, 2000]

§ 1427.26 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 and OMB Control number 0560–0040, 0560, 0074, 0560–0027, and 0560–0054 was assigned.

Subpart B—Regulations for the Upland Cotton First Handler Marketing Certificate Program.

SOURCE: 56 FR 41434, Aug. 21, 1991, unless otherwise noted.

§ 1427.50 Applicability.

(a) The regulations of this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 1996. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (''CCC'') shall make payments, in the form of commodity certificates or cash, to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreement with CCC to participate in the first handler marketing certificate program, in accordance with Section 103B(a)(5)(B) of the Agricultural Act of 1949, as amended.

(b) If, during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that the adjusted world price for upland cotton determined in accordance with §1427.25 is less than the loan repayment rate for a crop of upland cotton determined in accordance with §1427.19(c) and that the cotton loan program implemented in accordance with §1427.8 and that the loan deficiency payment program implemented in accordance with §1427.23, have failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments in accordance with the provisions of this subpart to eligible first handlers of upland cotton.

(c) Additional terms and conditions are set forth in the Upland Cotton First Handler Agreement which must be executed by the first handler in order to receive such payments.

(d) Forms which are used in administering the first handler marketing certificate program shall be prescribed by CCC.

[56 FR 41434, Aug. 21, 1991, as amended at 57 FR 14328, Apr. 20, 1992]

§ 1427.51 Administration.

(a) The first handler marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out in the field by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, may authorize KCCO or KCMO to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the first handler marketing certificate program.

(e) A representative of CCC may execute first handler marketing certificate payment applications, Upland Cotton First Handler Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications, Upland Cotton First Handler Agreements and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

[56 FR 41434, Aug. 21, 1991, as amended at 57 FR 14328, Apr. 20, 1992]

§ 1427.52 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in §1427.3 of this part and part 1413 of this chapter shall also be applicable.

Baled lint means cotton which has passed through the ginning process and has been baled.

Loose means samples removed from bales of upland cotton for classification purposes which have been rebaled.

Modified seed cotton cleaning equipment means incline, airline or impact seed cotton cleaners which have been modified to remove the smaller trash material normally present in raw (unprocessed) motes.

Person means an individual, corporation, partnership, association, or other business entity.

Raw (unprocessed) motes means lint cleaner waste resulting from the ginning process.

Reginned (processed) motes means semi-processed motes which have been further cleaned through one or more stages of modified seed cotton cleaning and one or more stages of lint cleaning equipment (sawtooth lint cleaning) by the gin, an intermediate processor or an end user, which are of a quality suitable, without further processing, for spinning, papermaking or other traditional manufacturing uses, and which have been rebaled, unless converted to an end use in a continuous manufacturing process by the end user who further cleaned the semi-processed motes.

Semi-processed motes means raw motes processed at the gin through one stage of modified seed cotton cleaning equipment, which have been baled, or moved directly into the reginning process.

[56 FR 41434, Aug. 21, 1991, as amended at 56 FR 59853, Nov. 26, 1991]

§ 1427.53 Eligible upland cotton.

(a) For the purposes of this subpart, eligible upland cotton is domestically produced 1991 or subsequent crop upland cotton which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either—

(1) Baled lint which is not pledged as collateral for a price support loan;

(2) Baled lint which has been pledged as collateral for a price support loan but which has been redeemed with cash;

(3) Baled lint which has been classified by USDA's Agricultural Marketing Service as Below Grade;

(4) Loose; or

(5) Semi-processed motes.

(c) Eligible upland cotton must not be:

(1) Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Cotton which was obtained through the exchange of a commodity certificate for cotton which had been pledged as collateral for a price support loan or from CCC inventory in accordance with the provisions of part 1470 of this chapter;

(3) Domestically produced cotton which has been exported and then reimported into the United States;

(4) Raw (unprocessed) motes;

(5) Reginned (processed) motes; or

(6) Textile mill wastes.

§ 1427.54 Eligible first handlers.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible first handlers:

(1) A person regularly engaged in buying or selling eligible upland cotton who has entered into an agreement with CCC to participate in the first handler marketing certificate program;

(2) A producer of upland cotton who sells directly to domestic textile mills or for export or who tenders upland cotton on a New York Futures Exchange number 2 contract and who has entered into an agreement with CCC to participate in the first handler marketing certificate program; and

(3) A cooperative marketing association, approved in accordance with part 1425 of this chapter, that acquires the upland cotton production of its members and that has entered into an agreement with CCC to participate in the first handler marketing certificate program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

§ 1427.55 Upland cotton first handler agreement.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers who have entered into an Upland Cotton First Handler Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the Upland Cotton First Handler Agreement and instructions issued by CCC.

(b) Upland Cotton First Handler Agreements may be obtained from Cotton Branch, CRD, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205. In order to participate in the program authorized by this subpart, first handlers must execute the Upland Cotton First Handler Agreement and forward an original and two copies to KCCO.

§ 1427.56 Form of payment.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter, or in cash, as determined and announced by CCC.

[57 FR 14329, Apr. 20, 1992]

§ 1427.57 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for upland cotton determined in accordance with § 1427.25 and the loan repayment rate determined in accordance with § 1427.19 and the Upland Cotton First Handler Agreement. A coarse count adjustment shall be applied in accordance with § 1427.25(f) and the Upland Cotton First Handler Agreement. Payment rates for Below Grade, loose and semi-processed motes shall be based on a percentage of the basic rate for baled lint, exclusive of coarse count adjustment, as specified in the Upland Cotton First Handler Agreement.

§ 1427.58 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.57, by

(2) The net weight (gross weight minus the weight of bagging and ties), determined as specified in the Upland Cotton First Handler Agreement, of eligible upland cotton that is purchased by an eligible first handler for either domestic consumption or export during a period in which a payment rate is established.

(b) Eligible upland cotton will be considered to be purchased by the first handler on the date title to the cotton passes to the first handler, as determined by CCC.

(c) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, as required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

Subpart C—Regulations for the Upland Cotton User Marketing Certificate Program.

SOURCE: 56 FR 41435, Aug. 21, 1991, unless otherwise noted.

§ 1427.100 Applicability.

(a) The regulations in this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 2003. These regulations set forth the terms and conditions under which the CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of upland cotton who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC to participate in the upland cotton user marketing certificate program in accordance with Section 136(a) of the Federal Agriculture Improvement and Reform Act of 1996.

(b) During the period beginning August 1, 1991, and ending July 31, 2003, subject to the availability of funds, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which—

(1) The Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch (''M 1 3/32 inch'') cotton, delivered C.I.F. (cost, insurance and freight) northern Europe, (''U.S. Northern Europe (USNE) price'') exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe, (''Northern Europe (NE) price'') by more than 1.25 cents per pound; and

(2) The adjusted world price (AWP) for upland cotton, determined in accordance with § 1427.25, does not exceed 134 percent of the current crop loan level for the base quality of upland cotton.

(c) Additional terms and conditions are set forth in the Upland Cotton Domestic User/Exporter Agreement which must be executed by the domestic user or exporter in order to receive such payments.

(d) Forms which are used in administering the upland cotton user marketing certificate program shall be prescribed by CCC.

[56 FR 41435, Aug. 21, 1991, as amended at 57 FR 14329, Apr. 20, 1992; 61 FR 37611, July 18, 1996; 65 FR 7954, Feb. 16, 2000]

§ 1427.101 Administration.

(a) The upland cotton user marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out in the field by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, may authorize KCCO or KCMO to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the upland cotton user marketing certificate program.

(e) A representative of CCC may execute upland cotton user marketing certificate payment applications, Upland Cotton Domestic User/Exporter Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications, Upland Cotton Domestic User/Exporter Agreements and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

[56 FR 41435, Aug. 21, 1991, as amended at 57 FR 14329, Apr. 20, 1992; 61 FR 37611, July 18. 1996]

§ 1427.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in §§ 1427.3 and 1427.52 of this part and part 1413 of this chapter shall also be applicable.

Bale opening means the removal of the bagging and ties from a bale of eligible upland cotton in the normal opening area, immediately prior to use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Consumption means, the use of eligible cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton product means any product containing cotton fibers that result from the use of a bale of cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the growth quoted for M 1 3/32 inch cotton, C.I.F. Northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Forward shipment price means, during the period in which two daily price quotations are available for the growths quoted for M 1 3/32 inch cotton, C.I.F. Northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the five lowest-priced growths of the growths quoted for M

1 3/32 inch cotton, C.I.F. Northern Europe.

Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. Northern Europe.

Northern Europe price means, during the period in which only one daily price quotation is available for the growth quoted for M 1 3/32 inch cotton, C.I.F. Northern Europe, the average of the price quotations for the preceding Friday through Thursday of the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. Northern Europe.

U.S. Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the lowest-priced United States growth as quoted for M 1 3/32 inch cotton, C.I.F. Northern Europe.

U.S. Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the lowest-priced United States growth as quoted for M 1 3/32 inch cotton, C.I.F. Northern Europe.

U.S. Northern Europe price means, during the period in which only one daily price quotation is available for the United States growths quoted for M 1 3/32 inch cotton, C.I.F. Northern Europe, the average of the price quotations for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1 3/32 inch cotton, C.I.F. Northern Europe.

[56 FR 41435, Aug. 21, 1991, as amended at 65 FR 7954, Feb. 16, 2000]

§ 1427.103 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which bale is opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2003, or exported by an eligible exporter on or after July 18, 1996, and on or before July 31, 2003, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect and which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either—

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade;

(2) Loose;

(3) Semi-processed motes which are of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(4) Reginned (processed) motes.

(c) Eligible upland cotton must not be—

(1) Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Imported cotton;

(3) Raw (unprocessed) motes;

(4) Semi-processed motes which are not of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(5) Textile mill wastes; or

(6) Semi-processed or reginned (processed) motes which have been blended with textile mill waste or other fibers.

[56 FR 41435, Aug. 21, 1991, as amended at 56 FR 59853, Nov. 26, 1991; 57 FR 14329, Apr. 20, 1992; 61 FR 37611, July 18, 1996; 65 FR 7954, Feb. 16, 2000]

§ 1427.104 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible domestic users and exporters of upland cotton:

(1) A person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of manufacturing such cotton into cotton products in the United States (''domestic user''), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program; or

(2) A person, including a producer or a cooperative marketing association approved in accordance with part 1425 of this chapter, regularly engaged in selling eligible upland cotton for exportation from the United States (''exporter''), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

§ 1427.105 Upland Cotton Domestic User/Exporter Agreement.

(a) Payments in accordance with this subpart shall be made available to eligible domestic users and exporters who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Cotton and Rice Branch, Warehouse Contract Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205. Telephone requests for copies of the agreement will be accepted at (816) 926–6662. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward the original and one copy to KCCO.

[56 FR 41435, Aug. 21, 1991, as amended at 65 FR 7954, Feb. 16, 2000]

§ 1427.106 Form of payment.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter, or in cash, as determined and announced by CCC.

[57 FR 14329, Apr. 20, 1992]

§ 1427.107 Payment rate.

(a) Beginning July 18, 1996, and ending July 31, 2003, the payment rate for purposes of calculating the payments made in accordance with this subpart shall be determined as follows for exporters for cotton shipped on or after July 18, 1996, and for domestic users:

(1) Beginning the Friday following August 1 and ending the week in which the Northern Europe current (NEc) price, the Northern Europe forward (NEf) price, the U.S. Northern Europe current (USNEc) price, and the U.S. Northern Europe forward (USNEf) price first become available, the payment rate shall be the difference between the USNE price, minus 1.25 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent in any week of the 4-week period; and

(2) Beginning the Friday through Thursday week after the week in which the NEc, the NEf, the USNEc, and the USNEf prices first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent in any week of the 4-week period. If either or both the USNEc price and the NEc price are not available, the payment rate may be the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of NE prices only for one to three weeks and NEc prices and NEf prices only for one to three weeks, such as occurs in the spring when the NE price is succeeded by the NEc price and the NEf price (''Spring transition'') and at the start of a new marketing year when the NEc price and the NEf price are succeeded by the NE price (''marketing year transition''), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the NEc price and the USNEc price in combination with the NE price and the USNE price shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition

periods, if either or both the USNEc price and the NEc price are not available, the USNEf price and the NEf price in combination with the USNE price and the NE price shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart—

(1) With respect to the determination of the USNE price, the USNEc price, the USNEf price, the NE price, the NEc price, and the NEf price:

(i) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(ii) CCC will not take into consideration a week in which no daily quotes are available for the entire 5-day period for either or both the USNE price and the NE price during the period when only one daily price quotation is available for each growth quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe, or the USNEc price and the NEc price, or the USNEf price and the NEf price. In that case, CCC may establish a payment rate at a level it determines to be appropriate, taking into consideration the payment rate determined in accordance with paragraph (a) of this section for the most recent available week; and

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc and the NEc price, the marketing year transition shall be implemented immediately.

(2) With respect to the determination of the USNE price, the USNEc price, and the USNEf price, if a quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe, is not available for each day or any day of the 5-day period, the available quotation(s) will be used.

(d) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the Upland Cotton Domestic User/Exporter Agreement.

[65 FR 7955, Feb. 16, 2000]

§ 1427.108 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.107, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined in accordance with paragraph (b) of this section, of eligible upland cotton bales that are opened by an eligible domestic user or sold for export by an eligible exporter during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment of the cotton was based (''landed mill weight'');

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible upland cotton will be considered—

(1) Purchased by the domestic user on the date the bale is opened in preparation for consumption; and

(2) Through July 31, 2003, exported by the exporter on the date CCC determines is the date on which the cotton is shipped.

(d) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchases and consumption of eligible cotton by the domestic user or proof of export of eligible cotton by the exporter, as required by the provisions of the Upland Cotton

Domestic User/Exporter Agreement issued by CCC.

[56 FR 41434, Aug. 21, 1991, as amended at 61 FR 37611, July 18, 1996; 65 FR 7955, Feb. 16, 2000]

Subpart D—Regulations for the Recourse Seed Cotton Loan Program

SOURCE: 61 FR 37612, July 18, 1996, unless otherwise noted.

§ 1427.160 Applicability.

(a) The regulations in this subpart are applicable to the 1996 through 2002 crops of upland and extra long staple seed cotton. These regulations set forth the terms and conditions under which recourse seed cotton loans shall be made available by the Commodity Credit Corporation (''CCC''). Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Loan rates and the forms which are used in administering the recourse seed cotton loan program for a crop of cotton are available in State and county Farm Service Agency (FSA) offices (State and county offices, respectively). Loan rates shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request the loan at the county office which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced. A CMA must, unless otherwise authorized by CCC, request the loan at a central county office designated by the State committee. All note and security agreements and related documents necessary for the administration of the recourse seed cotton loan program shall be prescribed by CCC and shall be available at State and county offices.

(d) Loans shall not be available for seed cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.161 Administration.

(a) The recourse seed cotton loan program which is applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the recourse seed cotton program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the recourse seed cotton loan program.

(f) A representative of CCC may execute loan applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such

terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.162 Definitions.

Section 1427.3 of this part shall be applicable to this subpart.

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent shall request a loan at the county office for the county which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced and which will assist the producer in completing the loan documents, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain loans through a central county office designated by the State committee.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.164 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, CMA estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12 and 718 of this title, and part 1412 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan documents are signed by the guardian;

(3) Any note and security agreement signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) Two or more producers may obtain a single joint loan with respect to cotton which is stored in an approved storage if the cotton is jointly owned by such producers. The cotton may have been produced by two or more eligible producers on one or more farms.

(e) A CMA may obtain loans on the eligible production of such cotton with respect to such cotton on behalf of the members of the CMA who are eligible to receive loans for a crop of cotton.

For purposes of this subpart, the term ''producer'' includes a CMA.

§ 1427.165 Eligible seed cotton.

(a) Seed cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must:

(1) Be in existence and in good condition at the time of disbursement of loan proceeds;

(2) Be stored in identity-preserved lots in approved storage meeting requirements of § 1427.171;

(3) Be insured at the full loan value against loss or damage by fire;

(4) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the seed cotton to CCC as collateral for a loan;

(5) Not have been previously sold and repurchased; or pledged as collateral for a CCC loan and redeemed;

(6) Be production from acreage that has been reported timely in accordance with part 718 of this title; and

(7) For upland cotton, be production from a farm with a production flexibility contract in accordance with part 1412 of this chapter.

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS), Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable documentation issued for the control sample.

(c) To be eligible for loan, the beneficial interest in the seed cotton must be in the producer who is pledging the seed cotton as collateral for a loan as provided in § 1427.5(c).

§ 1427.166 Insurance.

The seed cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the seed cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.168 [Reserved]

§ 1427.169 Fees, charges, and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined in accordance with paragraph (b).

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine-picked cotton and 22 percent for machine-stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

(1) Condition or suitability of the storage site or structure;

(2) Condition of the cotton;

(3) Location of the storage site or structure; and

(4) Other factors peculiar to individual farms or producers which related to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, from an approved gin. If the cotton is not stored on the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement.

(a) A producer may, at any time prior to maturity of the loan, obtain release of all or any part of the loan seed cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from CCC for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the seed cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan principal plus interest and charges thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;

(ii) 5 days after the date of the producer received the AMS classification in accordance with §1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan principal, interest, and charges must be satisfied immediately.

(3) A producer, except a CMA, may obtain a nonrecourse loan or loan deficiency payment in accordance with subpart A of this part, on the lint cotton, but:

(i) The loan principal, interest, and charges on the seed cotton must be satisfied from the proceeds of the nonrecourse loan in accordance with subpart A of this part; or

(ii) The loan deficiency payment must be applied to the loan principal, interest, and charges on the outstanding seed cotton loan.

(4) A CMA must repay the seed cotton loan principal, interest, and charges before pledging the cotton for a nonrecourse loan or before a loan deficiency payment can be approved in accordance with subpart A of this part, on the lint cotton. If CMA's authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the CMA:

(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan principal, plus interest and charges, within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the seed cotton or to release the producer or

CMA from liability for the loan principal, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan principal, plus interest and charges on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a nonrecourse loan in accordance with subpart A of this part on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the seed cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the seed cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the seed cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a nonrecourse loan in accordance with subpart A of this part by the seed cotton loan maturity date may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds received from the sales of the cotton are less than the amount due on the loan (including principal, interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference. If the proceeds received from sale of the cotton are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the cotton, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1427.174 Maturity of seed cotton loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calendar year in which such crop is normally harvested.

§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan, maintaining a loan, or settling a loan or if the producer disposes of or moves the loan collateral without the prior approval of CCC, such loan amount shall be refunded upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC with respect to the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts; and

(v) Liquidated damages in accordance with paragraph (e).

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, seed cotton pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this subpart. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the seed cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such seed cotton, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or in maintaining or settling a loan or disposing of or moving the collateral without the prior approval of CCC. Accordingly, if CCC or the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages shall be assessed on the quantity of the seed cotton which is involved in the violation. If CCC or the county committee determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense;

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(f) For first and second offenses, if CCC or the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid;

(2) Assess liquidated damages in accordance with paragraph (e); and

(3) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan involved in the violation.

(g) For cases other than first or second offenses, or any offense for which CCC or the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages in accordance with paragraph (e);

(2) Call the applicable loan involved in the violation.

(h) If CCC or the county committee determines that the producer has committed a violation in accordance with paragraph (e), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information to the county committee regarding the circumstances which caused the violation, and

(2) Administrative actions will be taken in accordance with paragraphs (f) or (g).

(i) Any or all of the liquidated damages assessed in accordance with the provision of paragraph (e) may be waived as determined by CCC.

Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

SOURCE: 44 FR 67085, Nov. 23, 1979, unless otherwise noted.

§ 1427.1081 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as ''CCC'') of warehouse(s) for the storage and handling of cotton and cotton linters, under a Cotton Storage Agreement, which are owned by CCC or held by CCC as security for price support loans. This subpart is not applicable to cotton or cotton linters purchased in storage for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the ''KCCO'').

(c) A warehouse must be approved by the KCCO and a storage agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart shall submit to CCC at KCCO:

(1) A completed Form CCC–49, ''Application for Approval of Warehouse for Storage of Cotton and/or Cotton Linters,''

(2) A current financial statement on Form WA–51, ''Financial Statement'', supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA–51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1427.1082(a)(2) and such other documents or information as CCC may require,

(4) For warehouseman not operating under the U.S. Warehouse Act, a sample copy of the warehouseman's receipts and bale tags, and

(5) Evidence of applicable fire insurance rates.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16454, Apr. 26, 1985]

§ 1427.1082 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC-owned or -loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of $25,000 or the amount which results from multiplying the maximum storage capacity of the warehouse (the

total number of bales of cotton or cotton linters which the warehouse can accommodate when stored in the customary manner) times ten (10) dollars per bale. The net worth need not exceed $250,000. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bond (or acceptable substitute security) meeting the requirements of § 1427.1083,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected, upon request by CCC, any deficiencies in the performance of any storage agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only card type warehouse receipts which are pre-numbered and prepunched or such other document as CCC may prescribe,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to provide adequate storage and handling service.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operation shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse operation shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1083 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process and in the State where the warehouse is located.

(b) Such bond shall be on Form CCC–33, ''Warehouseman's Bond'', except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than ninety (90) days or includes a rider providing for not less than ninety (90) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC, CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC–33A, ''Irrevocable Letter of Credit'', or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1084 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage and handling of the commodity and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1427.1085 Exceptions.

Notwithstanding any other provisions of this report:

(a) The financial bond and original and periodic warehouse examination provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodity but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least $25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity,

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985; 56 FR 11502, Mar. 19, 1991]

§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. This notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination of notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing

an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (hereinafter referred to as ''FSA''). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman shall be considered as a ''participant''; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1087 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

[44 FR 67085, Nov. 23, 1979, as amended at 44 FR 74797, Dec. 18, 1979]

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the FEDERAL REGISTER.

[Amdt. 4, 50 FR 36569, Sept. 9, 1985]

§ 1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR part 1427) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0040, 0560–0074, 0560–0027, and 0560–0059.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985. Redesignated by Amdt. 4, 50 FR 36569, Sept. 9, 1985]

Subpart F—Cottonseed Payment Program

SOURCE: 65 FR 65722, Nov. 2, 2000, unless otherwise noted.

§ 1427.1100 Applicability.

(a) The regulations in this subpart are applicable to the 2000 crop of cottonseed. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to first handlers of cottonseed who have applied to participate in the Cottonseed Payment Program in accordance with Section 204(e) of Public Law 106–224. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive cottonseed payments.

(b) Payments shall be available only for cottonseed produced and ginned in the United States.

§ 1427.1101 Administration.

(a) The Cottonseed Payment Program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out by FSA's Price Support Division (PSD) and Kansas City Management Office (KCMO).

(b) The PSD and KCMO and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation of this subpart to PSD or KCMO shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by PSD or KCMO .

(d) The Executive Vice President, CCC, or a designee, may waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the cottonseed payment program.

(e) A representative of CCC may execute cottonseed payment program applications and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

§ 1427.1102 Definitions.

The definitions set forth in this section shall be applicable for purposes of administering the 2000 Cottonseed Payment Program. The terms defined in §§ 1427.3, 1427.52, and 1427.102 shall also be applicable to this subpart.

Application period means a period, to be announced by CCC, during which applications for payments under the Cottonseed Payment Program must be received to be considered for payment.

Cottonseed means the seed from any variety of upland cotton and extra long staple (ELS) cotton produced and ginned in the United States.

Gin means a person (i.e., an individual, partnership, association, corporation, cooperative marketing association, estate, trust, State or political subdivision or agency thereof, or other legal entity) that removes cotton seed from cotton lint.

Lint means cotton lint as contained in bales of cotton ordinarily marketed as cotton and excludes any linters, raw motes, re-ginned motes, cleaned motes, and any other gin waste or by product not traditionally defined as cotton lint.

Number of bales means the number of running bales of cotton based on individual bale weights unadjusted to a uniform bale weight.

Olympic average means the average for the stated period after excluding the highest and lowest values.

Running bale means a bale of cotton lint that has a minimum weight of 425 pounds.

Ton means a unit of weight equal to 2000 pounds avoirdupois (907.18 kilograms).

§ 1427.1103 Eligible cottonseed.

To be eligible for payments under this subpart, cottonseed must:

(a) Have been grown in the United States during the 2000-crop production period.

(b) Have been ginned by the applicant from 2000-crop cotton.

(c) Not have been destroyed or damaged by fire, flood, or other events such that its loss or damage was compensated by other local, State, or Federal Government or private or public insurance or disaster relief payments.

§ 1427.1104 Eligible first handlers.

(a) For the purpose of this subpart, an eligible first handler of cottonseed shall be a gin that ginned 2000-crop cotton.

(b) Applicants must comply with the terms and conditions set forth in this subpart and instructions issued by CCC, and sign and submit an accurate, legible and complete Cottonseed Payment Program Application/Certification.

(c) Applicants, in signing the Cottonseed Payment Program Application/Certification, must agree to share any payment received with the producer of the cotton that was the basis of the

payment to the extent that the revenue from cottonseed sale is shared with the producer.

§ 1427.1105 Payment application.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers of cottonseed based on information provided on a Cottonseed Payment Program Application/Certification.

(b) Payment applications must be received within the program application period announced by CCC. Applications received after such application period may not be accepted for payment.

(c) Cottonseed Payment Program Applications/Certifications may be obtained from the CCC as announced by press release. In order to participate in the program authorized by this subpart, first handlers of cottonseed must execute the Cottonseed Payment Program Application/Certification and forward the completed original to CCC as announced and directed on the application.

§ 1427.1106 Total available program funds.

The total available program funds shall be $100 million as provided by Section 204(e) of Public Law 106–224.

§ 1427.1107 Applicant payment quantity.

(a) The applicant's payment quantity of cottonseed will be determined by CCC based on the number of eligible ginned cotton bales and cotton lint weight submitted on the Cottonseed Payment Application/Certification and/or obtained by CCC, with the agreement of the applicant, from the Agricultural Marketing Service.

(b) The applicant's payment quantity of cottonseed shall be calculated by multiplying:

(1) The applicant's weight of lint for which payment is requested, as approved by CCC, by

(2) The 1995–99 Olympic average of estimated pounds of cottonseed per pound of ginned cotton lint for all domestic ginners.

§ 1427.1108 Total payment quantity.

(a) The total quantity of 2000-crop cottonseed produced in the United States is eligible for payment under this subpart. The total payment quantity of cottonseed will be the total of eligible cottonseed for which applications for payment are received within the application period announced by CCC.

(b) The total payment quantity of cottonseed (ton-basis) shall be calculated by multiplying:

(1) The weight of cotton lint (ton-basis) for which payment is requested by all applicants, as approved by CCC, by

(2) The 1995–99 Olympic average of estimated pounds of cottonseed per pound of ginned cotton lint .

§ 1427.1109 Payment rate.

The payment rate (dollars per ton) for the purpose of calculating payments made available in accordance with this subpart shall be determined by CCC by dividing the total available program funds by the total payment quantity of 2000-crop cottonseed.

§ 1427.1110 Payment calculation and form.

(a) Payments in accordance with this subpart shall be determined for individual applicants by multiplying:

(1) The payment rate, determined in accordance with § 1427.1109, by

(2) The payment quantity of the applicant, determined in accordance with § 1427.1107.

(b) After receipt of the application for payment, together with required supporting documents and the determination of the payment rate, CCC will issue payments to the applicant by electronic deposit to the applicant's account. Applicants may request that payment be made by mailed check. If a payment is not made within 30 days of the close of the announced application period, CCC will pay interest at the prompt payment interest rate.

§ 1427.1111 Liability of first handler.

(a) If a first handler makes any fraudulent representation in obtaining a cottonseed payment, such payment shall be refunded upon demand by CCC. The first handler shall be liable for the amount of the payment and applicable interest on such payment, as determined by CCC.

(b) If more than one person executes a payment application with CCC, each such person shall be jointly and severally liable for any violation of the terms and conditions of the application and the regulations set forth in this subpart. Each such person shall also remain liable for the repayment of the entire payment amount until the payment is fully repaid without regard to such person's claimed share in the cottonseed payment.

(c) If the payment recipient is suspected by CCC to have knowingly:

(1) Adopted any scheme or device which violates this Application;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this Application, CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(d) If the payment applicant receives a payment in excess of the entitled payment in accordance with the application, the applicant shall refund to CCC an amount equal to the excess payment, plus interest thereon, as determined by CCC.

(e) From the date of the payment application until the earlier of 3 years after the date of the application or July 31, 2004, the applicant shall keep records and furnish such information and reports relating to the application as may be requested by CCC. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payments received, plus interest thereon, as determined by CCC. Nothing in this section shall, however, authorize the destruction of any records where there is an on-going dispute or where the party involved has reason to know that such records remain material to the operation of the program.

(f) No Member or Delegate of Congress or Resident Commissioner shall be admitted to any share or part of payments provided under this Application or to any benefit to arise therefrom, except that this provision shall not be construed to extend to their interest in any incorporated company, if this Application is for the general benefit of such company, nor shall it be construed to extend to any benefit that may accrue to such official in their capacity as a producer.

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

SOURCE: 65 FR 36565, June 8, 2000, unless otherwise noted.

§ 1427.1200 Applicability.

(a) Except as specified by CCC, the regulations in this subpart are applicable to the period beginning June 8, 2000, unless the Executive Vice President, CCC, shall apply the regulations to an earlier period, but not earlier than October 1, 1999, consistent with the authorizing statute. These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of extra long staple (ELS) cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC to participate in the ELS cotton competitiveness payment program in accordance with section 136A(c) of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127).

(b) During the effective period of these regulations, CCC may issue marketing certificates or cash payments to domestic users and exporters, at the option of the recipient, in accordance with this subpart in any week following a consecutive 4-week period in which:

(1) The lowest adjusted Wednesday through Tuesday average price quotation for foreign growths (LFQ), as quoted for ELS cotton, delivered C.I.F. (cost, insurance and freight) Northern Europe is less than the Wednesday through Tuesday adjusted average domestic spot price quotation for U.S. Pima cotton, grade 3, staple 44, micronaire 3.5 or higher, uncompressed, F.O.B. warehouse; and

(2) The LFQ, determined in accordance with §1427.1207, is less than 134 percent of the current crop year loan level for the ELS cotton grade 3, staple 44, micronaire 3.5 or higher.

(c) Additional terms and conditions may be set forth in the ELS Cotton Domestic User/Exporter Agreement, which must be executed by the domestic user or exporter in order to receive such payments.

(d) Forms that are used in administering the ELS cotton competitiveness payment program shall be prescribed by CCC.

§ 1427.1201 Administration.

(a) The ELS cotton competitiveness payment program shall be administered under the general supervision of the Executive Vice-President, CCC (Administrator, FSA), or a designee and shall be carried out by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, may authorize KCCO or KCMO to waive or modify non-statutory deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the ELS cotton competitiveness payment program. In addition, the Executive Vice President may suspend the program to the extent that cause to do so may appear as a result of a public rulemaking or otherwise.

(e) A representative of CCC may execute ELS cotton competitiveness payment program payment applications, ELS Cotton Domestic User/Exporter Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications, ELS Cotton Domestic User/Exporter Agreements and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) This program shall only be administered to the extent that it is determined by the Executive Vice President, CCC, that it is lawful and appropriate to commit funds to this program from those sources specifically identified as the funding source in the authorizing legislation.

§ 1427.1202 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in §§1427.3 and 1427.52 of this part and part 1413 of this chapter shall also be applicable.

Adjusted spot price means the spot price adjusted to reflect any lack of data for grade 3 or staple 44 to make the adjusted spot price comparable to a spot price assuming grade 3 and staple 44. If grade 3 spot price data are not available, spot prices for grade 2, grade 1, or grade 4 will be used and will be adjusted by the average difference between spot prices for grade 3 and those for grade 2, grade 1 or grade 4, as the case may be, over the available observations during the previous 12 months. If spot prices for staple 44 are not available, spot prices for staple 46 may be used and will be adjusted by the average difference between spot prices for staple 44 and those for staple 46 over the available observations during the previous 12 months.

Bale opening means the removal of the bagging and ties from a bale of eligible ELS cotton in the normal opening area, immediately prior to use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Consumption means, the use of eligible ELS cotton by a domestic user in the manufacture in the United States of ELS cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth quoted C.I.F. Northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Forward shipmentprice means, during the period in which two daily price quotations are available for the LFQ for foreign growths quoted C.I.F. Northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Wednesday-through-Tuesday week of the price quotations for foreign growths of ELS cotton, quoted C.I.F. Northern Europe, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, grade 3, staple 44, micronaire 3.5 and higher, provided that the lowest adjusted quotation becomes the LFQ after it is further adjusted to reflect the estimated cost of transportation between an average U.S. location and northern Europe.

(1) *Current LFQ* means the average for the preceding Wednesday through Tuesday of the current shipment prices for the lowest adjusted foreign growth, C.I.F. Northern Europe.

(2) *Forward LFQ* means the average for the preceding Wednesday through Tuesday of the forward shipment prices for the lowest adjusted foreign growth quoted C.I.F. Northern Europe.

Spot price means the Wednesday-Tuesday weekly average of the domestic spot prices reported by the Agricultural Marketing Service, USDA, for U.S. Pima, grade 3, staple 44, micronaire 3.5 or higher, uncompressed, F.O.B. warehouse, for the San Joaquin and Desert Southwest markets. When both San Joaquin Valley and Desert Southwest spot quotations are available, the U.S. quotation will be the average of the two quotations. If only one quotation is available, that quotation will be used.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is—

(1) Opened by an eligible domestic user on or after October 1, 1999, or,

(2) Exported by an eligible exporter on or after October 1, 1999, during a Wednesday through Tuesday period in which a payment rate, determined in accordance with § 1427.1207, is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either—

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade;

(2) Loose;

(3) Semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(4) Reginned (processed) motes.

(c) Eligible ELS cotton must not be—

(1) ELS Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw (unprocessed) motes;

(4) Semi-processed motes that are not of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(5) Textile mill wastes; or

(6) Semi-processed or reginned (processed) motes that have been blended with textile mill waste or other fibers.

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton for the purpose of manufacturing such cotton into cotton products in the United States (''domestic user''), who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program; or

(2) A person, including a producer or a cooperative marketing association approved in accordance with part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (''exporter''), who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the ELS Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments in accordance with this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the ELS Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from the Cotton and Rice Branch, Warehouse Contract Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205. Telephone requests for copies of the agreement will be accepted at (816) 926–6662. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to KCCO.

§ 1427.1206 Form of payment.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter, or in cash, at the option of the participant, as determined and announced by CCC.

§ 1427.1207 Payment rate.

(a) The payment rate for purposes of calculating the payments made in accordance with this subpart shall be determined as follows:

(1) Beginning the Tuesday following August 1 and ending the week in which the current LFQ and the forward LFQ may first become available, the payment rate shall be the difference between the U.S. Pima spot price and the LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the LFQ each week, and the LFQ was less than 134 percent of the current crop year loan level for U.S. Pima cotton, grade 3, staple 44, micronaire 3.5 or higher in all weeks of the 4-week period; and

(2) Beginning the Wednesday through Tuesday week after the week in which the current LFQ and the forward LFQ may first become available and ending the Tuesday following July 31, the payment rate shall be the difference between the U.S. Pima spot price and the current LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the current LFQ each week, and the current LFQ was less than 134 percent of the current crop year loan level for U.S. Pima grade 3, staple 44, micronaire 3.5 or higher in all weeks of the 4-week period. If the current LFQ is not available, the payment rate may be the difference between the U.S. Pima spot price and the forward LFQ.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ for only for one to three weeks and current LFQ and forward LFQ only for one to three weeks, such as may occur in the spring when the LFQ price is succeeded by the current LFQ and the forward LFQ (''Spring transition'') and at the start of a new marketing year when the current LFQ and the forward LFQ are succeeded by the LFQ (''marketing year transition''), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the current LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if the current LFQ is not available, the forward LFQ in combination with the LFQ shall be taken into consideration

during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, with respect to the determination of the U.S. Pima spot price, the LFQ, the current LFQ and the forward LFQ:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If the U.S. Pima spot price is not available or if none of the LFQ, current LFQ or forward LFQ is available, the payment rate shall be zero and shall remain zero unless and until sufficient U.S. Pima spot prices and/or LFQ again become available, the U.S. Pima spot price exceeds the LFQ, the current LFQ or the forward LFQ, as the case may be, and the LFQ, the current LFQ, or the forward LFQ, as the case may be, is less than 134 percent of the current crop year loan rate for U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1208 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined in accordance with paragraph (b) of this section, of eligible ELS cotton bales that are opened by an eligible domestic user or sold for export by an eligible exporter during the Wednesday through Tuesday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (''landed mill weight'');

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered—

(1) Purchased by the domestic user on the date the bale is opened in preparation for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchases and consumption of eligible ELS cotton by the domestic user or proof of export of eligible ELS cotton by the exporter, as required by the provisions of the ELS Cotton Domestic User/Exporter Agreement issued by CCC.

PART 1430—DAIRY PRODUCTS

Subpart A—Price Support Program for Milk

Sec.
1430.1 Definitions.
1430.2 Price support levels and purchase conditions.
1430.3 Ineligibility for purchase of products produced in States with excessive manufacturing allowances.

Subpart B—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991, to December 31, 1997

1430.340 General statement.
1430.341 Definitions.
1430.342 Responsibility for administration of regulations.
1430.343 Required reductions and remittances.
1430.344 Refunds—General provisions for eligibility and other requirements.

1430.345 Determination of marketings for refund purposes; Related persons; Refunds for years in which the person whose proceeds were reduced leaves the dairy business.
1430.346 Transfer of milk marketing history for purposes of establishing eligibility for a refund.
1430.347 Availability of records and facilities.
1430.348 Adjustment of accounts.
1430.349 Charges and penalties.
1430.350 Limitation of authority.
1430.351 Estates and trusts; minors.
1430.352 Appeals.
1430.353 Over-disbursement.
1430.354 Death, incompetency, or disappearance.
1430.355 Assignment.
1430.356 Instructions and forms.
1430.357 Scheme or device.
1430.358 Continuing obligations.
1430.359 Administrative review of charges against responsible persons.
1430.360 Offsets and withholdings.
1430.361 Paperwork Reduction Act assigned number.
1430.362 Assessment Termination, Refund Provisions for 1996 Assessments, and Clarification of Certain Procedures and Delegations.

Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products

1430.400 Definitions.
1430.401 Applicability.
1430.402 Administration.
1430.403 Loan rates.
1430.404 Quantity eligible for loan.
1430.405 Quality eligibility requirements.
1430.406 Storage facility requirements.
1430.407 Availability, disbursement, and maturity of loans.
1430.408 Loan maintenance and liquidation.
1430.409 Miscellaneous provisions.
1430.410 Applicable forms.

Subpart D—Dairy Market Loss Assistance Program

1430.500 Applicability.
1430.501 Administration.
1430.502 Definitions.
1430.503 Time and method for application.
1430.504 Eligibility.
1430.505 Proof of production.
1430.506 Payment rate and dairy operation payment.
1430.507 Misrepresentation and scheme or device.
1430.508 Maintaining records.
1430.509 Refunds; joint and several liability.
1430.510 New producers.

AUTHORITY: 7 U.S.C. 7251 and 7252; and 15 U.S.C. 714b and 714c.

Subpart A—Price Support Program for Milk

SOURCE: 61 FR 37615, July 18, 1996, unless otherwise noted.

§ 1430.1 Definitions.

For purposes of this subpart, unless the context indicates otherwise, the following definitions shall apply:

AMS means the Agricultural Marketing Service, USDA.

CCC means the Commodity Credit Corporation, USDA.

FSA means the Farm Service Agency, USDA.

Manufacturing allowance means:

(1) For milk used to produce butter and nonfat dry milk, the amount by which the product price value of butter and nonfat dry milk manufactured from 100 pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of nonfat milk solids resulting from a State's yields and product price formulas exceeds the State's class price for the milk used to produce those products; or

(2) For milk used to produce cheese, the amount by which the product price value of cheese manufactured from 100 pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of nonfat milk solids resulting from a State's yields and product price formulas exceeds the State's class price for the milk used to produce cheese.

Plant means the physical assets of an individual, partnership, association, corporation, cooperative, or other business enterprise used in the production of dairy products.

USDA means the United States Department of Agriculture.

§ 1430.2 Price support levels and purchase conditions.

(a)(1) The levels of price support provided to farmers marketing milk containing 3.67 percent milkfat from dairy cows are: $10.35 per hundredweight for calendar year 1996, $10.20 per hundredweight for calendar year 1997, $10.05 per hundredweight for calendar year 1998, and $9.90 per hundredweight for calendar years 1999 and 2000.

(2) Subject to paragraph (b), price support for milk will be made available

through CCC purchases of butter, nonfat dry milk, and Cheddar cheese, offered subject to the terms and conditions of FSA's purchase announcements.

(3) CCC purchase prices for dairy products will be announced by USDA news release.

(4) CCC may, by special announcement, offer to purchase other dairy products to support the price of milk.

(5) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from the United States Department of Agriculture, Farm Service Agency, Procurement and Donations Division, Stop 0552, 1400 Independence Ave. SW., Washington, DC 20250–0552, or the United States Department of Agriculture, Farm Service Agency, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205.

(b)(1) The block cheese purchased shall be U.S. Grade A or higher, except that the moisture content shall not exceed 38.5 percent; the barrel cheese shall be U.S. Extra Grade, except that the moisture content shall not exceed 36.5 percent.

(2) The nonfat dry milk purchased shall be U.S. Extra Grade, except that the moisture content shall not exceed 3.5 percent.

(3) The butter purchased shall be U.S. Grade A or higher.

(c) The products purchased shall be manufactured in the United States from milk produced in the United States and shall not have been previously owned by CCC.

(d) Purchases will be made in carlot weights specified in the announcements. Grade and weights shall be evidenced by USDA issued inspection certificates.

[61 FR 37615, July 18, 1996, as amended at 65 FR 7955, Feb. 16, 2000]

§ 1430.3 Ineligibility for purchase of products produced in States with excessive manufacturing allowances.

(a) For the period beginning May 1, 1996, and ending December 31, 1999, no product produced in a plant in a State under State milk pricing regulation will be eligible for sale to the CCC under § 1430.2 of this subpart, if the State, as determined by the Director, Dairy Division, AMS, provides in formulas establishing prices that handlers must pay for milk, a manufacturing allowance that exceeds either:

(1) $1.65 per hundredweight of milk for milk manufactured into butter and nonfat dry milk; and

(2) $1.80 per hundredweight of milk for milk manufactured into cheese.

(b) Prior to a final determination that a State has in effect a manufacturing allowance that exceeds the manufacturing allowances provided in (a) of this section, the State shall be provided the opportunity to present information at a hearing before the Director, Dairy Division, AMS. The Director shall establish the procedures for such hearing.

(c) Reconsideration and review of the determinations made under (b) of this section may be sought by petition to the Deputy Administrator, Marketing Programs, AMS under procedures established by the Deputy Administrator.

Subpart B—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991 to December 31, 1997

AUTHORITY: 7 U.S.C. 1446e.

SOURCE: 56 FR 4527, Feb. 5, 1991, unless otherwise noted.

§ 1430.340 General statement.

(a) *Purpose.* This subpart implements the provisions of section 204 of the Agricultural Act of 1949 as amended and affected by section 1105(g)(3) of the Omnibus Budget Reconciliation Act of 1990 and sections 1105(a)(4) and 1105(c) of the Omnibus Budget Reconciliation Act of 1993, under which the Secretary of Agriculture is required to provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the calendar years 1991 through 1997.

(b) *Amount of the reduction.* (1) The amount of the price reduction shall be 5 cents per hundredweight of milk marketed by producers for commercial use in 1991 and, except as provided by the

provisions of paragraph (b)(2) of this section, 11.25 cents per hundredweight of milk marketed by producers for commercial use in the calendar years 1992 through 1995 and 10 cents per hundredweight of milk marketed by producers for commercial use in the calendar years 1996 and 1997.

(2) On or before May 1 of each of the calendar years 1992 through 1997, the amount of reduction per hundredweight for each such year shall be adjusted individually for the remainder of the relevant year to compensate for refunds of price reductions made in the preceding calendar year which were collected by CCC under this subpart. The adjustment shall be announced by the Secretary by the required date.

(3) The reductions provided for in paragraphs (b) (1) and (2) of this section shall be in addition to any other reduction in the price received by producers as may be required under law.

(4) The reductions provided for in paragraphs (b)(1) and (b)(2) of this section shall be made and remitted to the CCC in the manner prescribed in § 1430.343 of these regulations.

(5) In addition, the CCC may make provision for the refund of monies collected in those cases in which the monies were collected for milk marketings later excluded by statutory amendment from coverage of this subpart for any of the calendar years 1992 through 1997.

(c) *Refund*. To the extent provided for in this subpart, a person may recover the entire amount by which prices were, for that producer, reduced under paragraphs (b)(1) or (b)(2) of this section for a year, if, as determined under the provisions in this subpart, the marketings of milk individually by such person and each of the persons who are *related persons* with respect to that person were not greater than the marketings of milk by those persons for the preceding year.

(d) *Applicability*. The provisions of this subpart shall apply to all milk produced in the United States that is marketed for commercial use by producers during the calendar years beginning on January 1, 1991, and ending December 31, 1997.

[56 FR 4527, Feb. 5, 1991, as amended at 57 FR 30897, July 13, 1992; 58 FR 61001, Nov. 19, 1993]

§ 1430.341 Definitions.

For purposes of this subpart unless otherwise specified, the following terms shall have the following meaning and shall be applied as if both the singular and plural forms were used:

(a) *AMS* means the Department's Agricultural Marketing Service.

(b) *FSA* means the Department's Farm Service Agency.

(c) *Base period* means the calendar year immediately preceding the calendar year for which a refund is being requested.

(d) *Bovine growth hormone* means a synthetic growth hormone produced through the process of recombinant DNA techniques that is intended for use in bovine animals.

(e) *CCC* means the Commodity Credit Corporation.

(f) *Calendar year* means, for the relevant year, the 12-month period beginning January 1 and ending December 31 of that year.

(g) *County committee* means an FSA county committee established under 16 U.S.C. at 590h.

(h) *Dairy Division* means the Dairy Division of the AMS.

(i) *DASCO* means the Deputy Administrator, State and County Operations, of the FSA.

(j) *Date of FDA BGH approval* means the date the FDA pursuant to authority under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b), first approves an application with respect to the use of BGH.

(k) *Department* means the United States Department of Agriculture.

(l) *FDA* means the Food and Drug Administration.

(m) *Milk marketed for commercial use* shall include all cow's milk which is disposed of in raw or processed form by voluntary or involuntary sale, barter or exchange, or by gift.

(n) *Milk marketing* means milk marketed for commercial use.

(o) *Person* means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity, and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

(p) *Producer* means any person who produced milk through the milking of cows.

(q) *Producer's Successor* means for purposes of this section only any person who receives or is entitled to receive payment for milk as a producer in those instances in which the producer will otherwise receive no payment for the milk from any source.

(r) *Reduction* means that amount by which the price received for milk marketed for commercial use by producers is reduced, or is required to be reduced, in accordance with the provisions of this subpart.

(s) *Refund* means the money that is or may be returned to a producer under this subpart by CCC for price reductions made under this subpart.

(t) *Refund period* means the calendar year for which a refund is being requested.

(u) *Responsible person* means:

(1) Any person who pays, or who is contractually or otherwise required to pay, a producer or producer's successor for milk marketed by a producer for commercial use, except to the extent that the producer of the milk is the responsible person under paragraph (u)(2) of this section; Provided, that the responsible persons under this paragraph shall include, but are not limited to, handlers of milk, including a handler regulated under a Federal milk order to the extent of, but not limited to, milk for which payments are transmitted by the handler to a Market Administrator under such an order for transmittal by the Market Administrator to individual producers; and

(2) Any producer with respect to milk of the producer's own production who markets such milk for commercial use in the form of milk or milk products:

(i) To consumers either directly or through retail or wholesale outlets, or

(ii) To persons located outside of the United States.

(v) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has been delegated or to whom authority may hereafter be delegated to act in his stead.

(w) *State Committee* means an FSA state committee established under 16 U.S.C. at 590h.

(x) United States means, except with respect to paragraphs (k), (v), and (y) of this section, the following:

(1) The District of Columbia, and

(2) All States except for Alaska and Hawaii.

(y) *United States Bank* means a bank organized under the laws of the United States, a state of the United States, or the District of Columbia.

(z) *Vice President, CCC* means the Vice President of CCC, who is also the Administrator of AMS.

[56 FR 4527, Feb. 5, 1991, as amended at 57 FR 30898, July 13, 1992; 58 FR 61001, Nov. 19, 1993]

§ 1430.342 Responsibility for administration of regulations.

(a) *Collection*. The AMS and its Dairy Division shall have the responsibility for administering the provisions of this subpart which relate to the collection of the reduction in the price to be received by producers of milk and the remittance of the reduction to the CCC. Administrative subpoenas, as may be determined to be necessary for the administration of this subpart and as permitted by law, may be issued by the Vice President, CCC, or his designee.

(b) *Refund*. DASCO, through the FSA State and county committees, shall have the responsibility for administering the provisions of this subpart which relate to the establishment and determinations of milk marketings during a base period for the purpose of refunds, and all other matters relating to refunds including administrative oversight of payments and the recovery of overpayments.

§ 1430.343 Required reductions and remittances.

(a) *Required reductions*. (1) A reduction of five (5) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1991, and ending December 31, 1991.

(2) Except as provided by the provisions of paragraph (a)(5) of this section, a reduction of eleven and twenty-five

hundredths (11.25) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1992, and ending December 31, 1995.

(3) Except as provided by the provisions of paragraph (a)(5) of this section, a reduction of ten (10.00) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1996, and ending December 31, 1997.

(4) The reductions specifically provided for in paragraphs (a)(2), (a)(3) and (a)(5) of this section with respect to the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1992, and ending December 31, 1997, shall, as appropriate, be reduced by ten percent during the period beginning on the date of FDA BGH approval and ending 90 days after the date of such approval.

(5) For each of the calendar years 1992 through 1997, the reductions as specifically provided for in paragraphs (a)(2) and (a)(3) of this section, with respect to marketings of milk for commercial use in those respective years, shall be increased on, or before, May 1 of the year for the remainder of the year by an amount per hundredweight of milk that is necessary in order to compensate for refunds made to producers of milk for price reductions collected under this subpart on milk marketed for the immediately preceding calendar year.

(b) *Remittances*. Each responsible person shall remit to the CCC the funds represented by the reductions required by this subpart by the last day of the month following the month in which the milk was marketed. For all milk marketed outside of the United States by producers, the producer shall also remit the funds represented by the reductions to CCC by the last day of the month following the month in which the milk was marketed, unless the person paying the producer for such milk has remitted the funds by that date, in which case the payment shall be considered to have been made by the producer and may be retained by CCC on that basis. Remittances to the CCC shall be made using negotiable instruments payable in United States currency, drawn on a United States bank, and made payable to the *Commodity Credit Corporation* or to the CCC. Remittances and reports required under this subpart shall be mailed to the location designated by the Dairy Division.

(c) *Remittance report*. (1) For each month that a person is a responsible person, such person shall, in addition to remitting the funds for the reduction, file a report as prescribed by the Dairy Division which shall include:

(i) The identity of the responsible person, including such person's business address;

(ii) The month in which the applicable marketings occurred;

(iii) The total pounds of milk to which the remittance applies; and

(iv) Any additional information required by the Dairy Division.

(2) The report required in paragraph (c)(1) of this section shall be submitted by the due date for the remittances required by this subpart.

(d) Application of Remittances. Funds received by the CCC pursuant to this subpart shall be applied first to any outstanding penalty, then to late-payment interest and other charges, and then to the principal amount due.

(e) The funds remitted to the CCC under this paragraph shall be considered to be included in the payments made to a producer of milk for purposes of the minimum price provisions of the Agricultural Adjustment Act (7 U.S.C. 601 *et seq.*), as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937.

[56 FR 4527, Feb. 5, 1991, as amended at 58 FR 61001, Nov. 19, 1993]

§ 1430.344 Refunds—General provisions for eligibility and other requirements.

(a) A refund of a reduction in producer proceeds made under this subpart may be made only to the extent explicitly provided for in this subpart. Such refunds may be made only for milk

marketed by producers in the calendar years 1991 through 1997. The monies that may be refunded to a person shall include only the reductions in proceeds of that person as provided for in § 1430.343(a) pursuant to provisions of the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993.

(b) A person may receive a refund only for reductions actually made in that person's producer proceeds for milk and only for those monies actually remitted to CCC.

(c) If other conditions are met, a person may receive a refund of the entire refundable reduction made under this subpart for a calendar year in that person's milk producer proceeds if for that year the marketings of milk for commercial use, individually, of that person and each related person with respect to that person were not greater than their marketings of milk for commercial use in the applicable base period. This calculation will be made separately for the person seeking the refund and each related person.

(d) The person seeking the refund shall be responsible to prove that the refund is due. Such person must present all relevant data needed by the county committee to establish eligibility for the payment or requested by the County Committee for that purpose. That information will include all information needed to make the necessary determinations concerning related persons. The person seeking the refund for all relevant months must present month-by-month marketing data for that person and related persons for the relevant time periods.

(e) If the person seeking the refund was a responsible person for such person's own milk production, then such person must also provide proof that the required remittances were paid to CCC. If the responsible person was a third party, the person seeking the refund shall be required to certify whether, to the best of such person's knowledge, the reductions to be refunded were remitted to the CCC. If the third party did not make full payment for all marketings of all producers for the relevant period, the refund eligibility of individual producer shall be adjusted in such manner as DASCO determines to be appropriate taking into consideration the purposes of this subpart.

(f) The burden of proof on all refund matters shall lie with the person seeking to obtain, or retain, a refund from CCC. Such persons may be required to obtain certifications and documentation as needed from third parties to establish eligibility for a refund.

(g) A person may seek a refund as a representative of a producer where such representation arises by reason of the death, disappearance or incompetency of the producer or by other cause as permitted by DASCO.

(h) No persons may apply for a refund before the end of the year of the reduction to be refunded.

(i) A complete application for a refund with all necessary documentation must be submitted to the county committee by March 15 of the year following the year for which the refund is requested, or if March 15 is not a business day, the next business day thereafter.

(j) If an overpayment of a refund is made, such overpayment shall be repaid to CCC with interest from the date of the overpayment. The repayment shall be due from the person who obtained the overpayment and any person who knowingly participated in a scheme or device to obtain the overpayment. If the overpayment resulted from a failure to comply with the provisions of this subpart, or results from a violation of this subpart, the persons responsible shall, in addition, be liable for a civil penalty to be paid to CCC. The amount of the penalty may be up to the amount equal to the quantity of milk involved in the overpayment multiplied by the support price for milk at the time the reduction in proceeds was made. These liabilities shall be in addition to any others imposed by law.

(k) All determinations made by county committee with respect to the granting of refunds or collection of overpayments shall be subject to review by DASCO, as deemed needed by DASCO to assure uniformity of treatment and to assure that there is full compliance with the provisions of this subpart.

[56 FR 4527, Feb. 5, 1991, as amended at 58 FR 61002, Nov. 19, 1993]

§ 1430.345 Determination of marketings for refund purposes; Related persons; Refunds for years in which the person whose proceeds were reduced leaves the dairy business.

(a) For purposes of calculating refund eligibility under this subpart, the marketings of a person for commercial use shall include all such marketings for the relevant period in which such person had an interest.

(b) As determined appropriate by DASCO to accomplish the goals of the program, the county committee may also consider marketings of milk occurring in the base period or in the reduction year of any operation with respect to which the person had an interest in the herd, the dairy animals, or in the facilities involved in the production at any time during the base period or reduction year.

(c) DASCO may consider a person to be in compliance with the requirements for the refund despite a failure to comply with conditions otherwise required by this subpart if such relief is deemed to be needed to afford fair and equitable treatment and the granting of such relief will not impair the accomplishment of the goals of the program.

(d)(1) Persons considered to be a related person with another person for purposes of calculating refund eligibility shall be as follows:

(i) The spouse and minor child of such person and/or guardian of such child;

(ii) Any corporation in which the person is a stockholder, shareholder, or owner of equal to, or greater than, a 10 percent interest in such corporation;

(iii) Any partnership, joint venture, or other enterprise in which the person has an ownership interest or financial interest; and

(iv) Any trust in which the person seeking the refund or any person listed paragraphs (d)(1) (i) through (iii) of this section is a beneficiary or has a financial interest.

(2) If the person seeking a refund is a corporation, partnership, or other entity, the related persons shall be considered to be:

(i) Any participant, owner, or stockholder in the entity except, in the case of corporations only, persons with less than a 10 percent share in the corporation shall not be considered a related person with respect to that corporation; and

(ii) As determined under the provisions of paragraph (d)(1) of this section, any person who is a related person with respect to the persons identified as a related person to an entity under (d)(2)(i) of this section.

§ 1430.346 Transfer of milk marketing history for purposes of establishing eligibility for a refund.

(a) If a producer has acquired the complete dairy operation (i.e., all land, all equipment and all dairy cattle at all locations) of a family member, the milk marketing history of the acquiring producer may be increased by the milk marketing history of the family member. The preceding sentence shall apply only if the transferor no longer has any interest in any dairy, dairy herd, or in any dairy production. No other transfer of a milk marketing history shall be permitted.

(b) A request for a transfer of the milk marketing history must be made to the county committee of the county where the acquiring producer's dairy farm is located. A transfer may be approved only if adequate records are presented to establish eligibility for the transfer.

(c) For purposes of this section:

(1) *A family member* of the transferee of the dairy operation shall include all of the following:

(i) The parent, grandparent, or legal guardian of the transferee;

(ii) The spouse of a parent or grandparent of the transferee;

(iii) The transferee's spouse;

(iv) The son, daughter, grandson or granddaughter of the transferee, or the spouse of any such persons;

(v) Siblings of the transferee and the spouses of such siblings.

(2) *Milk marketing history* means the milk marketings by the transferor of the dairy operations in the year preceding the year of the transfer of the complete dairy operation which could have been used by the transferor to claim a refund of a reduction in producer proceeds made under this subpart.

(d) Notwithstanding any other provisions of this subpart, if a milk marketing history is transferred:

(1) The transferor shall not be eligible for a refund of a reduction in producer proceeds made in the year of the transfer.

(2) The marketing of milk in the year of the transfer which could be attributed to the transferor shall be considered solely to be marketings by the transferee for calculations relating to refunds of reductions made in the transfer year or in the following year; and

(3) The transferee, to the extent that other conditions are met, may claim refunds of reduction made in the proceeds of the transferor for the transfer year.

(e) A transfer of milk marketing history under this section shall become null and void if the transferor returns to dairying at any time prior to the payment of a refund to the transferee which took into account the transferor's marketings of milk.

§ 1430.347 Availability of records and facilities.

(a) *Records to be maintained.* Each responsible person and person seeking a refund shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart and/or eligibility for a refund.

(b) *Availability of records and facilities.* Each responsible person or other persons affected by the provisions of this subpart shall make available to authorized representatives of the CCC or the Department all records and facilities pertaining to such person's operations that are necessary to determine compliance with the provisions of this subpart.

(c) *Retention of records.* All records required under this subpart shall be retained by the person required to keep such records for a period of three years beginning at the end of the calendar year to which such records pertain, or for such longer period as the Dairy Division or the CCC may require by notice to such person.

§ 1430.348 Adjustment of accounts.

Except as otherwise provided in this section, whenever the responsible person or person obtaining a refund becomes aware through an audit or other means that an error in payment or refund has been made, such person must immediately notify the CCC of the error and make any payment to the CCC that is due the CCC, together with any late-payment interest and other charges as are provided for in this subpart. If the error is otherwise unknown to the person involved until notice is given by the CCC, the underpayment plus late-payment interest and other charges provided for in this subpart shall be made by the next date for remitting reductions as provided in § 1430.343 or within the time specified by the CCC if no subsequent remittances are required by this subpart from such person. Overpayments to the CCC by a responsible person shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amount otherwise due to the CCC from the responsible person or refunded if no amounts are due to the CCC from such person. Nothing in this section shall reduce the liability of a person to the CCC for late-payment interest and other charges for underpayment or nonpayment to the CCC.

§ 1430.349 Charges and penalties.

(a) *Charge for dishonored negotiable instruments.* Each person who issues a negotiable instrument to the CCC in connection with this subpart that is not honored because of insufficient funds or any other reason will be charged $25 plus such additional costs as may apply. The amount of this charge shall be in addition to any and all other authorized charges and penalties.

(b) *Late-Payment Interest.* Any unpaid obligation due the CCC under this subpart shall be increased by late-payment interest. Such interest shall be assessed in accordance with the provisions of 7 CFR part 1403 or successor regulations so designated by the Department. The timeliness of payment to the CCC shall be determined based on the applicable postmark date or the date of receipt by the CCC if no postmark date is available or legible.

(c) *Penalties.* (1) In addition to other penalties provided for in this subpart, a civil penalty payable to the CCC shall

be due from any responsible person who fails to make a reduction in the price of milk as required in this subpart and from any person who fails to remit to the CCC the funds required to be collected and remitted by this subpart, or fails to comply with any other requirement or provision of this subpart. Such penalty shall be in addition to any other amount due CCC and in addition to any other liability imposed by law. The amount of the penalty shall be up to an amount which is equal to the support price for milk in effect at the time the failure occurs multiplied by the quantity of milk involved. The Vice President, CCC, or a designee, may assess a penalty at less than the maximum amount where it is determined equitable in those cases where the failure was unintentional and such relief can be granted without harm to the program.

(2) The Vice President, CCC, or a designee, shall notify any person against whom a penalty is to be assessed of the intention to assess such penalty and provide such person with an opportunity for an administrative hearing.

§ 1430.350 Limitation of authority.

(a) State and county committees or their designees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) A State committee may take any action authorized or required by the regulations in this subpart to be taken by a county committee when such action has not been taken by the county committee. A State committee may also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart, or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee shall preclude DASCO, or a designee, from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 1430.351 Estates and trusts; minors.

(a) For purposes of this subpart, a receiver of an insolvent debtor's estate and the trustee of a trust estate may, for the purpose of this subpart, be considered to represent an insolvent producer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee shall be considered to be production of the producer which such receiver or trustee represents. Program documents executed by the receiver or trustee will be accepted only if they are legally authorized and valid and such person has the authority to execute the applicable documents.

(b) A person seeking a refund under the provisions of this part who is a minor shall be eligible for a refund under the regulations in this subpart only if:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are signed by the guardian; or

(3) As determined by DASCO, an acceptable bond is furnished by an acceptable surety which protects CCC against any loss as may result to CCC in connection with the minor and the administration of this subpart.

§ 1430.352 Appeals.

Except as otherwise provided in this subpart with respect to matters under the supervision of AMS, the appeal regulations in 7 CFR part 780 shall be applicable to appeals of determinations made under this subpart.

§ 1430.353 Over-disbursement.

If a refund is disbursed under this subpart which exceeds the amount allowed in this subpart, the person receiving payment and that person's successors shall be personally liable for repayment of the amount of such excess payment plus interest computed in accordance with 7 CFR part 1403, if applicable, or in the amount allowed by law if part 1403 does not apply.

§ 1430.354 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any person who is entitled to a refund, such refund may be made to the person or persons who are specified in 7 CFR part 707. The person requesting such refund shall file Form ASCS–325, ''Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent'' as provided in that part or meet such other requirements as may be imposed in successor regulations so designated by the Department.

§ 1430.355 Assignment.

Any person who may be entitled to a refund may assign his rights to such refund in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

§ 1430.356 Instructions and forms.

Such forms and instructions as are necessary for establishing milk marketings during the base period and obtaining refunds pursuant to the provisions in this subpart may be obtained from the county FSA office.

§ 1430.357 Scheme or device.

(a) Any person who is determined by the CCC to have knowingly adopted, or participated in, any scheme or device which tends to defeat, or has the effect of defeating, the implementation of, or purposes of, the provisions of this subpart, or the program provided for in this subpart, or who makes any fraudulent representation or misrepresents any fact affecting a determination under this subpart, shall be considered to have knowingly violated the provisions of this subpart and shall be liable for the civil penalty provided for in this subpart. In such event, in addition to any penalties which are due, all amounts which would have been due to the CCC for the reductions required by this subpart but which were not paid because of the prohibited activity shall be immediately payable by such person to the CCC.

(b) All or any part of the refunds due a person under this part may be withheld or required to be refunded to the CCC with interest computed in accordance with 7 CFR part 1403 if the person adopts, or participates in adopting, any scheme or device designed to evade, or which has the effect of evading, the rules and purposes of this part. Such acts shall subject the person involved to penalties at the rate provided for in this subpart, and such acts include, but are not limited to, concealing from the county committee any information having a bearing on the application of the rules of this part, submitting false information to the county committee, transferring dairy cows to another dairy operation in order to meet requirements for refunds, or creating fictitious entities. This liability shall be in addition to any other liability imposed in accordance with this subpart or any other provision of law.

§ 1430.358 Continuing obligations.

The obligations of any person that arise under this subpart shall continue in effect until final payment or other disposition agreed to by the CCC even though the reductions provided for in this part may no longer be required.

§ 1430.359 Administrative review of charges against responsible persons.

Any responsible person who is adversely affected by any determination of liability under the terms and conditions of this subpart that relate to the collection of the reductions required by this subpart shall be able to obtain further consideration of such determination by filing a request for reconsideration with the Director of the Dairy Division within 30 days of the date of notice of the determination. If, upon reconsideration by the Director, the responsible person is dissatisfied with the new determination, such person may obtain a review of such determination and an informal hearing by filing an appeal with the Vice President, CCC. Such appeal must be filed within 15 days of the date of the redetermination by the Director. Such appeals to the Vice President, CCC, will, to the extent practicable, be conducted in the same manner as administrative appeals which are conducted under 7 CFR part 780. The decision on such appeal shall constitute the final agency action in the matter.

§ 1430.360 Offsets and withholdings.

The CCC may offset or withhold any amounts due the CCC under this subpart in accordance with the provisions of 7 CFR part 1403 or successor regulations as designated by the Department.

§ 1430.361 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the reduction related information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB number 0560–0126 has been assigned. Information collection requirements related to refunds will be submitted for approval at a later date.

§ 1430.362 Assessment Termination, Refund Provisions for 1996 Assessments, and Clarification of Certain Procedures and Delegations.

(a) Notwithstanding any other provision of this part, no assessment shall be collected for milk marketed after April 30, 1996. Amounts collected for 1996 marketings shall be refundable as otherwise provided for in this subpart so long as, determined pursuant to this subpart, the producer's total milk marketings for calendar year 1996 were equal to or less than the producer's total marketings for calendar year 1995.

(b) For purposes of applying the provisions of this subpart:

(1)(i) No adjustment shall be made for milk marketings in a leap year, but rather comparisons between the refund and base period milk marketings shall be made on a calendar year basis.

(ii) If a producer quits marketing milk from a dairy operation during the refund period, the comparison of marketings with the preceding year shall be made by comparing the marketings of the months and days of production in the refund period with the corresponding months and days of the base period, subject, in addition, to the provisions in paragraph (a).

(2)(i) A producer under this subpart may be deemed to include the combination of all persons or entities with an interest in the production of milk on a farm or dairy operation.

(ii) The addition or removal of an individual or entity, who adds to or removes from existing dairy units any dairy cows, to or from those with an interest in a dairy operation, shall constitute the formation of a new producer and shall be deemed to end the production history on that farm or dairy operation of the previous producer.

(3) All delegations to persons or agencies contained in this subpart shall be deemed, as appropriate, to be made to the successor official or agency resulting from any reorganization made pursuant to Public Law 103–354.

[61 FR 37616, July 18, 1996]

Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products

SOURCE: 61 FR 37616, July 18, 1996, unless otherwise noted.

§ 1430.400 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart. The terms defined in parts 1405 and 1421 of this chapter shall also be applicable.

CCC means the Commodity Credit Corporation, USDA.

FSA means the Farm Service Agency, USDA.

Processor means a person or legal entity that commercially processes milk into Cheddar cheese, butter, or nonfat dry milk.

Recourse loan means a loan that requires repayment in full on or before the maturity date and forfeiture does not necessarily satisfy the loan indebtedness.

USDA means the United States Department of Agriculture.

§ 1430.401 Applicability.

(a) The regulations in this subpart are applicable to eligible dairy products produced after December 31, 2000. These regulations set forth the terms and conditions under which CCC will make recourse loans to eligible processors. Additional terms and conditions shall be those set forth in the loan application and the note and security agreement that a processor must execute in order to receive such a loan.

(b) Loan rates for the eligible dairy products shall be made available in FSA State and county offices.

(c) Recourse loans shall be available as provided in this part for eligible Cheddar cheese, butter, and nonfat dry milk.

[61 FR 37616, July 18, 1996, as amended at 65 FR 7955, Feb. 16, 2000]

§ 1430.402 Administration.

(a) The loan program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), and shall be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of this subpart.

(c) The State committee shall take any action these regulations require which the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), from determining any question arising under the program or from revising or modifying any State or county committee determination.

(e) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect recourse loan program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the CCC authorized date, is null and void.

§ 1430.403 Loan rates.

(a) The Secretary will announce before January 1, 2001, and thereafter, before October 1 of each year, that a recourse loan program is available under this subpart, and loan rates for Cheddar cheese, butter, and nonfat dry milk based on a milk equivalent value of $9.90 per hundredweight of milk containing 3.67 percent butterfat.

(b) Such loan rates will be announced by USDA news release.

[61 FR 37616, July 18, 1996, as amended at 65 FR 7955, Feb. 16, 2000]

§ 1430.404 Quantity eligible for loan.

(a) Any processor is eligible for a recourse loan on eligible dairy products owned by such processor.

(b) The total quantity of eligible dairy product which a processor may pledge as collateral for a loan at any single time may not exceed:

(1) The quantity of eligible dairy products processed during the fiscal year in which application is being made; plus

(2) The quantity of eligible dairy products processed during and under loan on September 30 of the prior fiscal year, if such products are immediately repledged as collateral for a supplemental loan on October 1 of the current fiscal year.

(c) All eligible dairy products pledged as collateral for a loan are required to be stored identity-preserved in eligible storage facilities.

(d) The processor shall furnish CCC such certification as CCC considers necessary to verify compliance with quantitative limitations.

§ 1430.405 Quality eligibility requirements.

(a) For dairy products to be eligible to be pledged as collateral for a recourse loan, the processor must furnish CCC such certification as CCC considers necessary to verify the following minimum quality requirements:

(1) Cheddar cheese shall be:

(i) U.S. Grade A or higher and moisture shall not exceed 38.5 percent for block cheese; or

(ii) U.S. Extra Grade and moisture shall not exceed 36.5 percent for barrel cheese.

(2) Nonfat dry milk shall be U.S. Extra Grade and moisture shall not exceed 3.5 percent; and

(3) Butter shall be U.S. Grade A or higher.

(b) Any eligible dairy product pledged as collateral must be free of any contamination by either natural or manmade substances and must not contain chemicals or other substances which are poisonous or harmful to humans or animals.

(c) CCC shall, at any time, have the right to inspect collateral in the storage facilities in which it is stored.

§ 1430.406 Storage facility requirements.

Eligible dairy products will be stored under the terms and conditions CCC prescribes.

§ 1430.407 Availability, disbursement, and maturity of loans.

(a)(1) To obtain an initial recourse loan on eligible dairy products, a dairy processor:

(i) Must file a request for an initial recourse loan, as CCC prescribes, with the State committee of the State where such processor is headquartered or a State committee designated county committee;

(ii) Must execute a note and security agreement and a storage agreement as CCC prescribes; and

(iii) Shall be responsible for all costs incurred in moving eligible dairy products to an eligible storage facility.

(2) A request for an initial loan must be filed no later than September 30 of the fiscal year in which the product was produced, but no earlier than January 1, 2001.

(3) If there are any liens or encumbrances on eligible dairy products pledged as collateral for a recourse loan, waivers that fully protect CCC's interest must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the eligible dairy product after the loan is approved.

(4) A processor shall pay CCC a loan service fee in connection with the disbursement of each loan. The amount of the service fee shall be determined and announced by the Executive Vice President, CCC.

(b) No loan proceeds may be disbursed for dairy products until they have actually been produced and are established as being eligible to be pledged as loan collateral.

(c) Loans will mature no later than September 30 following disbursement of the loan.

(1) Loan maturity dates may be accelerated by CCC in accordance with § 1430.428 (d) of this subpart.

(2) CCC may offer supplemental loans at the maturity of initial loans.

(d)(1) A processor may, if supplemental loans are offered, before the maturity date of an initial loan, request a supplemental loan by:

(i) Repaying the initial loan principal plus interest on September 30;

(ii) Repledging as collateral for a supplemental loan, on October 1, eligible dairy products identified as collateral for an initial loan maturing on September 30 of the immediately preceding fiscal year; and

(iii) Executing a note and security agreement and a storage agreement as CCC prescribes.

(2) Such supplemental loan:

(i) Shall be requested by the processor no later than September 30 of the fiscal year in which the initial loan is maturing.

(ii) Shall be at the loan rate and interest rate applicable to the month in which the supplemental loan is disbursed.

(iii) Shall mature as CCC specifies, but not later than September 30 following disbursement of the supplemental loan.

(iv) May only be authorized for 1 fiscal year.

(e) The county office shall file or record, as required by State law, all security agreements which are issued with respect to eligible dairy products pledged as collateral for loan. The cost of filing and recording shall be paid for by CCC.

[61 FR 37616, July 18, 1996, as amended at 65 FR 7956, Feb. 16, 2000]

§ 1430.408 Loan maintenance and liquidation.

(a) The processor shall:

(1) Abide by the terms and conditions of the loan application and the note and security agreement;

(2) Pay interest on the principal at a rate determined under part 1403 of this chapter;

(3) Be responsible for storage costs through loan maturity;

(4) Be responsible for any loss in quantity or quality of the loan collateral, and

(5) Be responsible for maintaining the quality and quantity of the loan collateral.

(b) The processor must pay CCC the principal and interest due and redeem their collateral no later than the loan maturity date.

(c) A processor may, at any time before maturity of the loan, redeem all or any part of the loan collateral by paying CCC the loan principal and interest applicable to the quantity of dairy product redeemed.

(d) CCC may at any time accelerate the date of repayment of the loan indebtedness, including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(e) Prior to loan maturity:

(1) The processor may request and obtain prior written approval of the loan making office to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before repayment of the loan by executing a Marketing Authorization for Loan Collateral (Form CCC–681–1).

(2) The loan making office will approve such a request when the buyer of eligible dairy products agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding the dairy products the buyer purchased. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the dairy product, or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(f) If a processor's loan indebtedness is not satisfied in accordance with the provisions of this section:

(1) Late payment charges in addition to interest on the processor's indebtedness shall accrue at the rate specified in part 1403 of this chapter and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale; and

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges incurred by the CCC.

(g) If CCC determines that the actual eligible quantity serving as collateral for a recourse loan is less than the loan quantity because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call all loans of the processor. Such determination shall result in the processor being deemed ineligible for loans for at least the remainder of the fiscal year.

(h) The security interests obtained by the CCC as a result of the execution of a security agreement by an eligible processor shall be superior to all statutory and common law liens on the collateral.

§ 1430.409 Miscellaneous provisions.

(a) CCC will not require the processor to insure the eligible dairy product pledged as collateral. However, if the processor insures such eligible dairy product and an indemnity is paid thereon, such indemnity shall accrue to the benefit of CCC to the extent of CCC's interest in the eligible dairy product involved in the loss.

(b) The regulations the Secretary issues governing offsets and withholding set forth at part 3 of this title and part 1403 of this chapter are applicable to the program set forth in this subpart.

(c) A processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations of part 780 of this title.

(d) CCC, as well as any other U.S. Government agency, shall have the right of access to the premises of the processor in order to inspect, examine, and make copies of the books, records, accounts, and other written data as the examining agency deems necessary to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written

data shall be retained by the processor for not less than 3 years from the loan disbursement date.

(e) Any false certification made for the purpose of enabling a processor to obtain or retain a recourse loan to which it is not entitled will subject the person making such certification to liability under applicable federal civil and criminal statutes.

§ 1430.410 Applicable forms.

The CCC forms used in connection with the dairy recourse loan program will be available from the appropriate State committee or designated county committee. For any CCC form that refers to program participation by producers, the term ''producer'' shall be deemed to mean ''processor'' and the term ''crop year'' shall be deemed to mean ''fiscal year''.

Subpart D—Dairy Market Loss Assistance Program

AUTHORITY: Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–78, 113 Stat. 1135.

SOURCE: 64 FR 24934, May 10, 1999, unless otherwise noted.

§ 1430.500 Applicability.

This subpart establishes the Dairy Market Loss Assistance Program. The purpose of this program is to provide benefits to dairy operations under Pub. L. 105–277, 112 Stat. 2681 and Sections 805 and 825 of Pub. L. 106–78 only, in order to provide financial assistance to dairy operations in connection with normal milk production that is sold on the commercial market.

[64 FR 24934, May 10, 1999, as amended at 65 FR 7956, Feb. 16, 2000]

§ 1430.501 Administration.

(a) The provisions of §§ 1430.351, 1430.352, 1430.354, 1430.355, and 1430.360 shall be applied to this subpart in the same manner as they are applied to the subpart in which they are located.

(b) The provisions of §§ 1430.1 through 1430.349, 1430.353, 1430.356 through 1430.359, 1430.361 through 1430.362, and 1430.400 through 1430.410 are not applicable to this subpart.

(c) This subpart shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Executive Vice President, CCC or designee. The program shall be carried out in the field by State and county FSA committees under the general direction and supervision of the State and county FSA committees.

(d) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this subpart.

(e) The State committee shall take any action required by this subpart which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(f) No delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(g) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 1430.502 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Dairy Market Loss Assistance Program established by this subpart.

Application means the Dairy Market Loss Assistance Program Payment application, CCC–1040.

Application period means April 12, 1999 through February 28, 2000..

Base period means the calendar year, either 1997 or 1998, as selected by the dairy operation, during which milk was produced and marketed.

Commodity Credit Corporation means the Commodity Credit Corporation.

Dairy operation means any person or group of persons who as a single unit as determined by CCC, produce and market milk commercially produced from cows and whose production and facilities are located in the United States.

Department means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.

Eligible production means milk that had been produced by cows in the United States and marketed commercially in the United States anytime during the 1997 and or 1998 calendar year, subject to a maximum of 26,000 cwt per dairy operation.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Fourth quarter of 1998 means the period from October 1, 1998 through December 31, 1998.

Marketed commercially means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.

Milk handler means the marketing agency to or through which the producer commercially markets whole milk.

Milk marketing means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

[64 FR 24934, May 10, 1999, as amended at 65 FR 7956, Feb. 16, 2000]

§ 1430.503 Time and method for application.

(a) Dairy operations may obtain an application, Form CCC–1040 (Dairy Market Loss Assistance Program Payment Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the CCC–1040 at http://www.fsa.usda.gov/dafp/psd/.

(b) A request for benefits under this subpart must be submitted on a completed Form CCC–1040. The Form CCC–1040 should be submitted to the county FSA office serving the county where the dairy operation is located but, in any case, must be received by the county FSA office by the close of business on February 28, 2000. Applications not received by the close of business on February 28, 2000, will be disapproved as not having been timely filed and the dairy operation will not be eligible for benefits under this program.

(c) All persons who share in the milk production of a dairy operation that marketed milk during the fourth quarter of 1998 must certify on the same CCC–1040 in order to obtain the total milk production of the dairy operation before the application is complete.

(d) The dairy operation requesting benefits under this subpart must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits. All information provided is subject to verification and spot checks by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

[64 FR 24934, May 10, 1999, as amended at 65 FR 7956, Feb. 16, 2000]

§ 1430.504 Eligibility.

(a) To be eligible to receive cash payments under this subpart, a dairy operation must:

(1) Have produced and marketed milk commercially in the United States anytime during the fourth quarter of 1998;

(2) Indicate all milk commercially marketed by all persons in the dairy operation during calendar year 1997 and 1998 to establish the base period for determining the total pounds of milk that will be converted to hundredweight (cwt) used for payment; and

(3) Apply for payments during the application period.

(b) A dairy operation must submit a timely application and comply with all other terms and conditions of this subpart and those that are otherwise contained in the application to be eligible for benefits under this subpart.

§ 1430.505 Proof of production.

(a) Dairy operations selected for spotchecks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the dairy operation was commercially marketing milk anytime during the fourth quarter of 1998. The dairy operation must also provide proof of production for the 1997 or 1998 calendar year to verify the base period. The documentary evidence of milk production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The pounds of 1997 or 1998 calendar year milk production must be documented using actual records.

(b) All persons involved in such dairy operation marketing milk during the fourth quarter of 1998 shall provide any available supporting documents to assist the county FSA office in verifying that the dairy operation produced and marketed milk commercially during the fourth quarter of 1998 and the base period milk marketings indicated on Form CCC–1040. Examples of supporting documentation include, but are not limited to: tank records, milk handler records, milk marketing payment stubs, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the production and production history of the dairy operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, dairy operations will be determined ineligible for benefits.

§ 1430.506 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations only on the first 26,000 cwt of milk produced by them from cows in the United States actually marketed in the United States during the base period. A payment rate will be determined after the conclusion of the application period, and shall be calculated by:

(1) Converting whole pounds of milk to cwt;

(2) Totaling the eligible cwt (not to exceed 26,000 cwt) of milk marketed commercially during the base period from all approved applications; and

(3) Dividing the amount available for Dairy Market Loss Assistance Program by the total eligible cwt submitted and approved for payment.

(b) Each dairy operation payment will be calculated by multiplying the payment rate determined in paragraph (a) (3) of this section by the dairy operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

§ 1430.507 Misrepresentation and scheme or device.

(a) A dairy operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a dairy operation engaged

in a misrepresentation, scheme, or device, or to any other person as a result of the dairy operation's actions, shall be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1430.508 Maintaining records.

Dairy operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this subpart and the pounds of milk marketed commercially during the fourth quarter of 1998 and the base period. Such records and accounts must be retained for at least three years after the date of the cash payment to dairy operations under this program.

§ 1430.509 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this subpart, and if any refund of a payment to CCC shall otherwise become due in connection with the application, or this subpart, all payments made under this subpart to any dairy operation shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons listed on a dairy operation's application shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this subpart.

(c) Interest shall be applicable to refunds required of the dairy operation if CCC determines that payments or other assistance were provided to the producer was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the dairy operation.

(d) Interest determined in accordance with paragraph (c) of this section may be waived by CCC with respect to refunds required of the dairy operation because of unintentional misaction on the part of the dairy operation, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 1403.

(f) Dairy operations must refund to CCC any excess payments made by CCC with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

§ 1430.510 New producers.

Notwithstanding other provisions of this subpart, producers who were new producers in 1999 and not affiliated with other eligible producers may receive payments from sums made available after October 2, 1999, based on their 1999 production levels.

[65 FR 7956, Feb. 16, 2000]

PART 1434—RECOURSE LOAN REGULATIONS FOR HONEY

Sec.

1434.1 Applicability.
1434.2 Administration.
1434.3 Definitions.
1434.4 Eligibility.
1434.5 Containers and drums.
1434.6 Application, availability, disbursement, and maturity.
1434.7 Eligible storage.
1434.8 Liens.
1434.9 Fees and interest.
1434.10 Determination of quantity.

1434.11 Transfer of producer's interest prohibited.
1434.12 Loss or damage.
1434.13 Personal liability of the producer.
1434.14 Release of the honey pledged as collateral for a loan.
1434.15 Liquidation of loans.
1434.16 Foreclosure.
1434.17 Handling payments and collections not exceeding $9.99.
1434.18 Death, incompetency, or disappearance; appeals; other loan provisions.

AUTHORITY: Sec. 1122, Pub. L. 105–277, 112 Stat. 2681; Sec. 3018, Pub. L. 106–31, 113 Stat. 57; Sec 801(f), Pub. L. 106–78, 113 Stat. 1175; Sec. 204(c), Pub. L. 106–224.

SOURCE: 64 FR 10924, Mar. 8, 1999, unless otherwise noted.

§ 1434.1 Applicability.

The regulations of this part provide the terms and conditions under which the Commodity Credit Corporation (CCC) may issue recourse loans for 2000-crop year honey that has remained continuously within the beneficial interest of the producer. Additional terms and conditions that must be followed to obtain a loan will be set forth in these regulations and the applicable note and security agreements. Forms needed to obtain a loan will be available in State and county Farm Service Agency (State and county) offices.

[64 FR 10924, Mar. 8, 1999, as amended at 65 FR 7956, Feb. 16, 2000; 65 FR 65716, Nov. 2, 2000]

§ 1434.2 Administration.

(a) The regulations of this part shall be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out in the field by State and county committees.

(b) State and county committees, representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not affect adversely the operation of the program.

(f) An approving official of CCC may execute loans and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void unless affirmed by the Executive Vice President, CCC.

§ 1434.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title shall also be applicable except where those definitions conflict with the definitions set forth in this section or in program instruments created under this part.

Administrator is the FSA Administrator.

Adulterated honey, is for the purpose of this part only, honey where any foreign substance including water has been substituted in whole or in part for honey whether or not such substance is poisonous or deleterious to render honey injurious to health or otherwise makes the honey unsound, unhealthy, unwholesome, or otherwise unfit for human or animal consumption.

Approving official is a representative of CCC who is authorized by the Executive Vice President, CCC, to approve loan documents prepared under this part.

Charge is a fee, cost, and expense (including foreclosure costs) incident to insuring, carrying, handling, storing, conditioning, and marketing the honey and otherwise protecting the honey.

CMA is a cooperative marketing association engaged in marketing honey.

County office is the local FSA office.

Crop year is the calendar year in which honey is extracted.

Executive Vice President, CCC, is the Administrator, FSA.

FSA is the Farm Service Agency, United States Department of Agriculture.

Ineligible honey is honey not eligible for a loan under this part for which ineligibility shall include, but is not limited to, honey from the following floral sources regardless of whether the honey meets other eligibility requirements: Andromeda, bitterweed, broomweed, cajeput (melaleuca), carrot, chinquapin, dog fennel, desert hollyhock, gumweed, mescal, onion, prickly pear, prune, queen's delight, rabbit brush, snowbrush (ceanothus), snow-on-the-mountain, spurge (leafy spurge), tarweed, and similar objectionably-flavored honey or blends of honey as determined by the Director, Price Support Division, FSA. If any blends of honey contain such ineligible honey, the lot as a whole shall be considered ineligibile for loan.

Loan is a recourse loan on honey.

Loan quantity is the quantity on which the loan was disbursed shown on the note and security agreement.

Nontable honey is honey having a predominant flavor of limited acceptability for table use even though such honey may be considered suitable for table use in areas in which it is produced and includes honey with a predominant flavor of aster, athel, avocado, Brazilian pepper, buckwheat (except western wild buckwheat), cabbage palmetto, Christmas berry, cranberry, dandelion, eucalyptus, goldenrod, heartsease (smartweed), horsemint, kiawe, loosestrife, macadamia, mangrove, manzanita, mint, partridge pea, rattan vine, safflower, salt cedar (Tamarix Gallica) spanish needle, spikeweed, titi, toyon, tulip popular, wild cherry, yaupon, and similarly-flavored honey or blends of such honeys as determined by the Director, Price Support Division, Farm Service Agency.

Ownership is with respect to honey tendered for a loan, control, title, risk of loss, and the right to make all decisions regarding the tender of honey to CCC for a loan or for marketing.

Person is an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable a State, political subdivision of a State, or any agency thereof.

Program is the administration and issuance of a loan in accordance with the terms and conditions of this part and of any note and security agreement which must be executed by a loan recipient under this part.

Table honey is any honey having a good flavor of the predominant floral source which can be readily marketed for table use in all parts of the country including honey having the following sources: alfalfa, apple, basswood, bird's-foot trefoil, blackberry, blueberry, brazil brush, catsclaw, Chinese tallow, clover, cotton, fireweed, gallberry, huajillo, knapweed (American), lima bean, mesquite, orange, raspberry, sage, saw palmetto, snowberry, sourwood, soybean, star thistle (barnaby's thistle), sunflower, sweet clover, tupelo, vetch, western wild buckwheat, wild alfalfa, and similar mild flavors or blends of mild-flavored honeys as determined by the Director, Price Support Division, FSA.

Representative is a receiver, executor, administrator, guardian, or trustee representing the interests of a person or an estate.

State committee is the FSA committee so designated for the applicable State.

§ 1434.4 Eligibility.

(a) To be eligible to receive an individual or joint loan under this part, a person must:

(1) Own, other than through a security interest, mortgage, or lien, honey that:

(i) Is produced in the United States during the calendar year for which a loan is requested and extracted on or before December 31 of such calendar year;

(ii) Does not contain any ineligible honey floral sources;

(iii) Is not adulterated;

(iv) Has not been scorched, burned, or subjected to excessive heat resulting in objectionable flavor, color deterioration or carmelization;

(v) Does not contain excessive bees or bee parts, paint chips, wood chips, or other foreign matter; and

(vi) Is not fermenting.

(2) Share in the risk of producing honey;

(3) Comply with paragraph (h) of this section;

(4) Store the honey pledged as loan collateral in eligible storage and in eligible metal containers that meet the requirements of §§1434.7 and 1434.5, respectively;

(5) Adequately protect the interests of CCC by providing security for a loan in accordance with the requirements in §1434.8 and by maintaining in good condition the honey pledged as security for a loan;

(6) Be accurate and truthful and not make any misrepresentations with respect to any information provided to CCC concerning any activity covered by this part; and

(7) Not have been convicted of a crime as would render the person not eligible for the loan because of the provisions of part 718 of this title.

(b) A person who complies with paragraph (a) of this section, who enters into a contract to sell the honey used as collateral for a loan but retains, at a minimum, a beneficial interest in the honey and who does not receive an advance payment from the purchaser to enter into the contract unless the purchaser is a cooperative marketing association (CMA) that is eligible under paragraph (g) of this section, remains eligible for a loan.

(c) Two or more applicants may be eligible for a joint loan if:

(1) The conditions in paragraphs (a) and (b) of this section are met with respect to the commingled honey collateral stored in the same eligible containers they are tendering for a loan; and

(2) The commingled honey is not used as collateral for an individual loan that has not been repaid.

(d) Heirs who succeed to a beneficial interest in the honey are eligible for a loan if they:

(1) Assume the decedent's obligation under a loan if such loan has already been obtained; and

(2) Assure continued safe storage of the honey if such honey has been pledged as collateral for a loan.

(e) A representative may be eligible to receive a loan on behalf of a person or estate who or which meets the requirements in paragraphs (a), (b), (c), and (d) of this section and that the honey tendered as collateral by the representative, in his capacity as a representative, shall be considered as tendered by the person or estate being represented.

(f) A minor who otherwise meets the requirements of this part for a loan shall be eligible to receive a loan only if the minor meets one of the following requirements:

(1) A court or statute has conferred the right of majority on the minor;

(2) A guardian has been appointed to manage the minor's property and the applicable loan documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A surety, by furnishing a bond, guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(g) A CMA which the Executive Vice President, CCC, determines meets the requirements for CMA's in part 1425 of this title may be eligible to obtain a loan on behalf of those members who themselves are eligible to obtain a loan provided that:

(1) The beneficial interest in the honey must always, until loan repayment or forfeiture, remain in the member who delivered the honey to the eligible CMA or its member CMA's, except as otherwise provided in this part; and

(2) The honey delivered to an eligible CMA shall not be eligible for a loan if the member who delivered the honey does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this title.

(h)(1) To be eligible to receive loans under this part a producer must have

the beneficial interest in the honey that is tendered to CCC for a loan. The producer must always have had the beneficial interest in the honey unless, before the honey was extracted, the producer and a former producer whom the producer tendering the honey to CCC has succeeded had such an interest in the honey. Honey obtained by gift or purchase shall not be eligible to be tendered to CCC for loans. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan shall be eligible to receive loans whether succession to the honey occurs before or after extraction so long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the honey if the producer retains control, title, and risk of loss in the honey including the right to make all decisions regarding the tender of such honey to CCC for a loan, and the producer takes one of the following actions:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, with respect to such honey if all other eligibility requirements are met and the option to purchase contains the following provision:

Notwithstanding any other provision of this option to purchase, title, risk of loss, and beneficial interest in the honey, as specified in 7 CFR part 1434, shall remain with the producer until the buyer exercises this option to purchase the honey. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) the maturity of any CCC loan which is secured by such honey; (2) the date the CCC claims title to such honey; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the honey if the producer retains title, risk of loss, and beneficial interest in the honey and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.

(3) If loans are made available to producers through an approved CMA in accordance with part 1425 of this chapter, the beneficial interest in the honey must always have been in the producer-member who delivered the honey to the CMA or its member CMA's, except as otherwise provided in this section. Honey delivered to such a CMA shall not be eligible for loans if the producer-member who delivered the honey does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this chapter.

(i) A producer may, before the final date for obtaining a loan for honey, re-offer as loan honey any honey that has been previously pledged as loan honey except that the loan on such re-offered honey shall have the same maturity date as the original loan.

§ 1434.5 Containers and drums.

(a)(1) The honey must be packed in metal containers of a capacity of not less than 5 gallons or greater than 70 gallons. The metal containers must meet the requirements of the Federal Food, Drug, and Cosmetic Act, as amended, and regulations issued thereunder and must be generally fit for the purpose for which they are to be used;

(2) The 5-gallon containers must hold approximately 60 pounds of honey, and must be new, clean, sound, uncased, and free from appreciable dents and rust. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and can opening must not be damaged in any way that will prevent a tight seal. Cans which are punctured or have been punctured and resealed by soldering will not be acceptable, and

(3) The steel drums must be an open-end type and filled no closer than 2 inches from the top of the drums. Such drums must be new or must be used drums which have been reconditioned inside and outside. The steel drums must be clean, treated inside and outside to prevent rusting, fitted with gaskets which provide a tight seal and have an inside coating suitable for honey storage.

(b) Honey shall not be eligible to be pledged as collateral for loans if such honey is stored in:

(1) 55-gallon steel drums having a tare weight less than 38 pounds, 30-gallon steel drums having a tare weight

less than 26 pounds, or drums having removable liners of polyethylene or other materials;

(2) Bung-type drums;

(3) Bulk tanks;

(4) Plastic buckets and containers;

(5) Steel drums which are severely enough dented as to cause damage to their lining, improper seal, or stacking capabilities; and

(6) Rusted drums with corroded areas.

§ 1434.6 Application, availability, disbursement, and maturity.

(a) The deadline for requesting a loan offered under this part is March 31, 2001.

(b) Loans mature on demand but not later than the last day of the ninth calendar month following the month in which the note and security agreement was approved. When the final maturity date falls on a non-workday for county offices, CCC shall extend the final date to the next workday. Before the date determined in paragraph (a) of this section, a producer may re-offer as loan collateral any eligible honey that has been offered previously for a CCC loan and the loan has been repaid.

(c) A producer must request loans at the county office of the county where the honey is stored if the honey is stored at the producer's farm. A producer who requests a loan on honey stored in eligible storage other than the producer's farm, may request loans at either the county office of the county where the storage facility is located or at the county office of the county where the producer's main place of business is located. A CMA must request loans at the county office for the county in which the principal office of the CMA is located unless the State committee designates another county office. If the CMA has operations in two or more States, the CMA must file its loan applications at the county office for the county in which its principal office for each State is located.

(d) Subject to paragraph (a) of this section, loans for the 2000-crop of honey will be available to producers on such date as may be announced by the Secretary.

(e) Loans will be made on the honey as declared and certified by the producer on Form CCC–633 (Honey), (Honey Loan Certification and Worksheet) at the time the honey is pledged as collateral for a loan. The producer is also required to declare and certify on Form CCC–633 (Honey) the class (table or nontable) and floral source of the honey at the time the honey is pledged as collateral for a loan.

(f) The request for a loan shall not be approved until all producers having an interest in the honey sign the note and security agreement and CCC approves such note and security agreement. The disbursement of loans will be made by county offices on behalf of CCC.

(g) The loan documents shall not be presented for disbursement unless the honey subject to the note and security agreement:

(1) Is eligible to be pledged as collateral for a loan;

(2) Is in existence;

(3) Has been extracted;

(4) Is in eligible storage; and

(5) Has not been blended or mixed with ineligible honey.

(h) If, after a loan is made, CCC determines that the producer or the honey collateral is not in compliance with any of the provisions of this part, the producer shall refund the total amount disbursed under loan and charges plus interest, including late payment interest as provided in part 1403 of this title.

(i) Subject to adjustments for quality and location as deemed appropriate by the Deputy Administrator, the average loan rate for loans made under this part shall be 85 percent of the average price of honey during the 5-crop years period preceding the crop year for which the loan is made, excluding the crop year in which the average price of honey was the highest and the crop year in which the average price of honey was the lowest in the period.

[64 FR 10924, Mar. 8, 1999, as amended at 65 FR 7956, Feb. 16, 2000; 65 FR 65716, Nov. 2, 2000]

§ 1434.7 Eligible storage.

(a) Loans will be made only on honey in eligible storage which shall consist of a storage structure located on or off the farm which is determined by CCC to be under the control of the producer and affords safe storage for honey

pledged as collateral for a loan. If the honey located in a farm storage structure is pledged as collateral that secures more than one loan, the honey must be segregated so as to preserve the identity of the honey securing such loan. Honey securing a loan must also be segregated from any honey not pledged as collateral for a loan which is stored in the same structure.

(b) Producers may also obtain loans on honey packed in eligible containers and stored in facilities owned by third parties in which the honey of more than one person is stored if the honey which is to be pledged as collateral for a loan and which is stored identity preserved or is segregated from all other honey. Each container of the segregated quantity of honey shall be marked with the producer's name, loan number, and lot number so as to identify the honey from other honey stored in the structure.

§ 1434.8 Liens.

(a) CCC's security interest in the honey pledged as collateral is first and superior to all other security interests.

(b) The county office shall file or record, as required by State law, all financing statements needed to perfect a security interest in honey pledged as collateral for a loan. The cost of filing and recording shall be for the account of CCC.

(c) If there are any other security interests, liens, or encumbrances on the honey, CCC shall obtain waivers that fully protect the interest of CCC even though the security interests, liens, or encumbrances are satisfied from the loan proceeds. No additional security interests, liens, or encumbrances shall be placed on the honey after the loan is approved.

§ 1434.9 Fees and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees will be available in State and county offices and will be shown on the note and security agreement.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

[64 FR 10924, Mar. 8, 1999, as amended at 65 FR 7956, Feb. 16, 2000]

§ 1434.10 Determination of quantity.

The amount of a loan shall be based on 100 per cent of the net weight in pounds of such quantity certified by the producer for honey on Form CCC–633 (Honey) which is pledged as security for the loan and covered by the note and security agreement. Estimates of the quantity of honey shall be made on the basis of 12 pounds for each gallon of rated capacity of the container.

§ 1434.11 Transfer of producer's interest prohibited.

Absent written approval from CCC, the producer shall not transfer either the remaining interest in, or right to redeem, the honey pledged as collateral for a loan on honey nor shall anyone acquire such interest or right. Subject to the provisions of § 1434.14, a producer who wishes to liquidate all or part of a loan by contracting for the sale of the honey must obtain written approval from the county office on a form prescribed by CCC to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office.

§ 1434.12 Loss or damage.

The producer is responsible for any loss in quantity or quality of the honey pledged as collateral for a loan. CCC shall not assume any loss in quantity or quality of the loan collateral.

§ 1434.13 Personal liability of the producer.

(a) When applying for an individual or joint loan, each producer agrees:

(1) When signing Form CCC–633 (Honey), Honey Loan Certification and Worksheet and Form CCC–677 Farm Storage Note and Security Agreement, that the producer will:

(i) Provide correct, accurate, and truthful certifications and representations of the loan quantity and all other matters of fact and interest; and

(ii) Not remove or dispose of any amount of the loan quantity without prior written approval from CCC in accordance with this section.

(2) That violation of the terms and conditions of this part and Form CCC–677 will cause harm or damage to CCC in that funds may be disbursed to the producer for a loan quantity which is not actually in existence or for a quantity for which the producer is not eligible.

(b) For the purposes of this section, violations include any failure to comply with this part or the loan agreement, including but not limited to any incorrect certification or:

(1) Unauthorized removal of honey which shall include but is not limited to the movement of any loan quantity of honey from the storage structure in which the commodity was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the county committee in accordance with § 1434.14.

(2) Any unauthorized disposition which shall include, but is not limited to the conversion of any loan quantity pledged as collateral for a loan without prior written authorization from the county committee in accordance with § 1434.14.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for conduct which is in violation of this section. Accordingly, if the county committee determines that the producer has engaged in any such violation, liquidated damages shall be assessed in addition to any loan refund and other charges that may be due. The amount of such damages shall be computed using the quantity of honey that is involved in the violation and the formula set out below. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity involved in the violation plus charges and interest; and

(2) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan for all of the honey under loan, plus charges and interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee shall call the loan involved in the violation, and charges plus interest.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) of this section if the county committee determines that:

(i) The violation occurred inadvertently, accidentally, or unintentionally; or

(ii) The producer acted to prevent spoilage of the commodity.

(2) Shall not consider the following acts as inadvertent, accidental, or unintentional:

(i) Movement of loan collateral off the farm;

(ii) Movement of loan collateral from one storage structure to another on the farm; and

(iii) Consumption of loan collateral.

(3) Shall furnish a copy of its determination to the State committee, and the Administrator. If the determination of the county committee is not disapproved by either the State committee or the Administrator or a designee, within 60 calendar days from the date the determination is received, such determination may be considered to have been approved unless the Administrator issues procedures that

allow for more time or decides in an individual case that more time is needed.

(g) If there is any violation of the loan agreement or this part, the loan may be terminated in which case there must be a full refund of the loan plus interest and costs.

(h) If the county committee determines that the producer has violated this part or the loan agreement, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee, and

(2) Administrative actions will be taken in accordance with paragraph (d) or (e) of this section.

(i)(1) If a producer:

(i) Makes any fraudulent or misleading representation in obtaining a loan, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall become payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan;

(B) Any additional amounts paid by CCC with respect to the loan;

(C) All other costs which CCC would not have incurred but for the fraudulent representation, the unauthorized disposition or movement of the loan collateral;

(D) Interest on such amounts;

(E) Late payment interest as may be provided for in part 1403 of this title; and

(F) Liquidated damages assessed under paragraph (c) of this section; and

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent or misleading representation to CCC or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with § 1434.14, the value of the settlement for such collateral removed by CCC shall be determined by CCC according to § 1434.16.

(j) A producer shall be personally liable for any damages resulting from honey removed by CCC, containing mercurial compounds or other substances poisonous to humans, animals, or food commodities which are contaminated.

(k) If the amount disbursed under a loan or in settlement thereof exceeds the amount authorized under this part, the producer shall be personally liable for repayment of such excess and charges, plus interest, and for any other sanction as may be allowed by law.

(l) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(m) In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the loan note. Further, each producer who is a party to a joint loan will be jointly and severally liable for any violation of the terms and conditions of the note and security agreement, and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the honey, or loan proceeds, after execution of the note and security agreement by CCC.

(n) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) of this section may be waived as determined by CCC.

(o) Remedies set out here are in addition to remedies the CCC will have through its security interest on honey which secures the repayment of the loan made on the honey.

(p) All remedies provided for in this section or part are in addition to any remedies as may otherwise be provided for in law.

§ 1434.14 Release of the honey pledged as collateral for a loan.

(a)(1) A producer shall not move or dispose of any honey pledged as collateral for a loan until prior written approval for such removal or disposition has been received from the county committee in accordance with this section.

(2) A producer may at any time obtain a release of all or part of the honey remaining as loan collateral by paying to CCC the amount of the loan and any charges which had been made by CCC to the producer with respect to the quantity of the honey released, plus interest.

(3) When the proceeds of a sale of honey are needed to repay all or part of a loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to any loan indebtedness if full payment of such amounts is not received by the county office.

(b) The note and security agreement shall not be released until all loan liability has been satisfied in full.

(c) After satisfaction of a loan, CCC shall release CCC's security interest in the honey at the producer's request. The producer shall be responsible for payment of any fee for such release if such fee can be determined.

§ 1434.15 Liquidation of loans.

(a) The producer is required to repay the loan on or before maturity by payment of the amount of loan, plus any charges, plus interest.

(b) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 calendar days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount, plus charges, plus interest shall be established. CCC shall inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title.

§ 1434.16 Foreclosure.

(a) Upon maturity and nonpayment of the loan, title to the unredeemed honey securing the loan shall vest in CCC.

(b) If the total amount due on a loan or the unpaid amount of the note and charges, plus interest is not satisfied upon maturity, CCC may remove the honey from storage and assign, transfer, and deliver the honey or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine at public or private sale. Any such disposition may also be effected without removing the honey from storage. The honey may be processed before sale and CCC may become the purchaser of the whole or any part of the honey at either a public or private sale.

(c) If the honey is removed from storage by CCC and is sold, the value of the settlement shall be the proceeds from the sale of the honey minus costs associated with the disposition of the honey and shall be applied to the amount owed CCC by the producer; and

(1) If the value of the collateral computed at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency and CCC may take any action against the producer to recover the deficiency; or

(2) If the proceeds received from the sale of the honey so computed are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the honey, such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1434.17 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1434.18 Death, incompetency, or disappearance; appeals; other loan provisions.

(a) In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the county office which made the loan, be made to the persons who would be entitled to such producer's share under the regulations contained in part 707 of this title. Applications for loans may be made upon application of a representative of the producer as allowed under standard practice for farm programs.

(b) Appeals of adverse decisions made under this part shall be subject to the provisions of 7 CFR parts 11 and 780.

(c) The Executive Vice President, CCC, may impose such additional loan conditions as are determined to be necessary or appropriate to insure that the purposes and goals of the program provided for in this part are met.

PART 1435—SUGAR PROGRAM

Subpart A—General Provisions

Sec.
1435.1 Applicability.
1435.2 Definitions.
1435.3 Maintenance and inspection of records.

Subpart B—Loan Program

1435.100 Applicability.
1435.101 Administration.
1435.102 Loan types.
1435.103 Loan rates.
1435.104 Eligibility requirements.
1435.105 Availability, disbursement, and maturity of loans.
1435.106 Loan maintenance.
1435.107 Loan settlement and foreclosure.
1435.108 Storage facility requirements.
1435.109 Processor storage agreement.
1435.110 Miscellaneous provisions.
1435.111 Applicable forms.

Subpart C—Sugar Marketing Assessments

1435.200 General statement.
1435.201 Marketing assessment rates.
1435.202 Remittance.
1435.203 Civil penalties and interest.
1435.204 Refunds.
1435.205 Special rules for fiscal years 2000 and 2001.

Subpart D—Information Reporting and Recordkeeping Requirements

1435.300 General statement.
1435.301 Civil penalties.

AUTHORITY: 7 U.S.C. 7272; and 15 U.S.C. 714b and 714c

SOURCE: 61 FR 37618, July 18, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 1435.1 Applicability.

These regulations set forth the terms and conditions under which Commodity Credit Corporation (CCC) will make loans and enter agreements with eligible processors for the 1996–2002 crop years. Additional terms and conditions are set forth in the loan application and the note and security agreement which the processor must execute in order to receive a loan. These regulations stipulate the requirements for making sugar marketing assessment payments to CCC for fiscal years 1996 through 2003 and the information reporting requirements for the 1996–2002 crop years.

[61 FR 37618, July 18, 1996, as amended at 62 FR 34612, June 27, 1997]

§ 1435.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration. The terms defined in part 718 of this title are also applicable.

Beet sugar means sugar which is processed directly or indirectly from sugar beets or sugar beet molasses.

Cane sugar refiner means a person who processes raw cane sugar into refined crystalline sugar or liquid sugar.

CCC means the Commodity Credit Corporation, USDA.

Crop year for the 1996 crop means the period from July 1, 1996 through September 30, 1997. *Crop year* for the 1997–2001 crops means the period from October 1 through September 30, inclusive, and is identified by the year in which the crop year begins. For example, the 1997 crop year begins on October 1, 1997. The 1997 crop of sugar beets, sugarcane, or sugar means domestically-produced sugar beets, domestically-produced

sugarcane, or sugar processed from domestically-produced sugar beets or sugarcane during the 1997 crop year. *Crop year* for the 2002 crop means the period from October 1, 2002 through June 30, 2003. Sugar from desugaring molasses is considered to be from the crop year the desugaring took place.

First processor means a person who commercially produces beet sugar or raw cane sugar, directly or indirectly, from domestically-produced sugar beets or sugarcane, or from molasses or thick juice derived from domestically-produced sugar beets or sugarcane.

Market means, relative to any first processor, the shipment in conjunction with a sale or other disposition, or the forfeiture to CCC, of beet sugar or raw cane sugar by the first processor of such sugar, and the movement of raw cane sugar into the refining process. Beet sugar or raw cane sugar is deemed to be marketed as of the date of shipment from the first processor's facility, the date on which raw cane sugar was moved into the refining process, or the date on which sugar was forfeited to CCC.

Nonrecourse loan means a loan for which the eligible sugar offered as loan collateral may be delivered or forfeited to CCC, at loan maturity, in satisfaction of the loan indebtedness.

Raw sugar means any sugar which is to be further refined or improved in quality.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = {[(actual degree of polarization − 92) × 0.0175] + 0.93} × actual weight. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the ''total sugar content'' (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

Recourse loan means a loan that requires repayment in full on or before the maturity date and forfeiture of the sugar does not necessarily satisfy the loan indebtedness.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane or sugar beets and consisting of, or containing, sucrose or invert sugar, including all raw sugar, refined crystalline sugar, liquid sugar, edible molasses, and cane syrup.

Sugar beet processor means a person who produces sugar by commercially processing sugar beets or sugar beet molasses.

Sugarcane processor means a person who produces raw cane sugar by commercially processing sugarcane or sugarcane molasses.

Tariff-rate quota means the total of the aggregate quantities of raw cane sugar and other sugars, syrups and molasses established, or subsequently modified, by the Secretary pursuant to the provisions of additional U.S. note 5(a) to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) for imports to be entered, or withdrawn from warehouse for consumption, under subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS or successor subheadings.

[61 FR 37618, July 18, 1996, as amended at 62 FR 34612, June 27, 1997]

§ 1435.3 Maintenance and inspection of records.

(a) CCC, as well as any other U.S. Government agency, has the right of access to the premises of any sugar beet processor, sugarcane processor, cane sugar refiner, or of any other person having custody of records that the examining agency deems necessary to verify compliance with the requirements of this part. The examining agency has the right to inspect, examine, and make copies of such books, records, accounts, and other written or electronic data as the examining agency deems relevant.

(b) Each sugar beet processor, sugarcane processor, and cane sugar refiner or any person having custody of the

records shall retain such books, records, accounts, and other written or electronic data for not less than 3 years from the date:

(1) A loan is disbursed in accordance with subpart B;

(2) A marketing assessment is remitted to CCC in accordance with subpart C; and

(3) Market data are reported to CCC in accordance with subpart D.

Subpart B—Loan Program

§ 1435.100 Applicability.

(a) This subpart is applicable to the 1996 through 2002 crops of sugar beets and sugarcane. These regulations set forth the terms and conditions under which CCC will make recourse and nonrecourse loans available to eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement which a processor must execute to receive a loan.

(b) Loan rates used in administering the loan program are available in FSA State and county offices.

(c) Loans shall not be available for sugar produced from imported sugar beets, sugarcane, or molasses.

§ 1435.101 Administration.

(a) The loan program shall be administered under the general supervision of the Executive Vice President, CCC, (Administrator, FSA) and shall be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, may not modify or waive any of the provisions of the regulations of part 1435.

(c) The State committee shall take any action part 1435 requires which the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action which is not in accordance with part 1435; or

(2) Require a county committee to withhold taking any action which is not in accordance with part 1435.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, (Administrator, FSA) from determining any question arising under the program or from reversing or modifying any State or county committee determination.

(e) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such requirements do not adversely affect program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the CCC-authorized date, shall be null and void.

§ 1435.102 Loan types.

(a) CCC will make available to eligible processors of the 1996 through 2002 crops of domestically-produced sugar beets and sugarcane:

(1) Recourse loans if the tariff-rate quota is not above 1,500,000 short tons, raw value, at the time of loan approval and has never been above 1,500,000 short tons, raw value, at any time during the fiscal year;

(2) Nonrecourse loans if the tariff rate quota exceeds 1,500,000 short tons, raw value, at the time of loan approval or has exceeded 1,500,000 short tons, raw value, at any time during the fiscal year.

(b) Outstanding recourse loans will be automatically converted to nonrecourse loans if the tariff-rate quota is increased to a level above 1,500,000 short tons, raw value. However, if the recourse loan recipient pays the principal amount of the loan, plus interest, within 30 days from the date the tariff-rate quota was increased, then the loan will be treated for all purposes whatsoever as if it had not been converted to a nonrecourse loan. Once nonrecourse loans are made available, they will not be converted to recourse loans any time during the fiscal year, even if the tariff-rate quota is subsequently reduced to a level equal to, or less than, 1,500,000 short tons, raw value.

§ 1435.103 Loan rates.

(a) The national average loan rate for raw cane sugar produced from the 1996 through 2002 crops of domestically-grown sugarcane is 18 cents per pound, raw value.

(b) The national average loan rate for refined beet sugar from 1996–2002-crop domestically-grown sugar beets is 22.90 cents per pound of refined beet sugar.

(c) The loan rates for eligible sugar are adjusted to reflect the processing location of the sugar offered as loan collateral and are available from State and county offices.

§ 1435.104 Eligibility requirements.

(a) An eligible producer is the owner of a portion or all of the domestically-produced sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR part 12, regulations governing crop insurance at 7 CFR part 400, or the regulations governing controlled substance violations at 7 CFR part 718.

(b) A sugar beet or sugarcane processor is eligible for loans if the processor agrees to all the terms and conditions in the loan application and the note and security agreement.

(c) Sugar pledged as collateral during the crop year:

(1) May not exceed the quantity derived from processing domestically-grown sugar beets or sugarcane from eligible producers during the applicable crop year;

(2) Must be processed and owned by the eligible processor and stored in suitable storage;

(3) May not have been processed from imported sugarcane, sugar beets, or molasses;

(4) Must have been processed in the United States or Puerto Rico; and

(5) Must have processor certification in the loan application that the sugar is eligible and available to be pledged as collateral.

(d) Sugar must meet the following minimum quality requirements to be eligible to be pledged as loan collateral:

(1) Refined beet sugar to be pledged as loan collateral must be:

(i) Dry and free flowing;

(ii) Free of excessive sediment; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic which would impair its merchantability or which would impair or prevent its use for normal commercial purposes.

(2) Raw cane sugar to be pledged as loan collateral must be:

(i) Of reasonable grain size;

(ii) Free from excessive color or moisture; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic which would impair its merchantability or which would impair or prevent its use for normal refining or commercial purposes.

(3) Sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such syrup or molasses or would impair or prevent the use of such syrup or molasses for normal commercial purposes.

§ 1435.105 Availability, disbursement, and maturity of loans.

(a) To obtain a loan, a processor must:

(1) File a loan request, as CCC prescribes, no later than September 30, 1997, for the 1996 crop year, no earlier than October 1 and no later than September 30 of the applicable crop year for the 1997–2001 crop years, and no earlier than October 1, 2002 and no later than June 30, 2003, for the 2002 crop year, with the State committee of the State where such processor is headquartered, or with a county committee designated by the State committee;

(2) Execute a note and security agreement as CCC prescribes; and

(3) Pay CCC a loan service fee in connection with the disbursement of each loan. The Executive Vice President, CCC, will determine and announce the service fee amount.

(b) If there are any liens or encumbrances on sugar pledged as collateral for a loan, the processor must obtain

waivers that fully protect CCC's interest even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after the loan is approved.

(c) No loan proceeds may be disbursed until the sugar has actually been processed and is otherwise established as being eligible to be pledged as loan collateral.

(d) A processor may, within the loan availability period, repledge as collateral sugar that previously served as loan collateral for a repaid loan.

(1) In making application for such loan, the processor shall:

(i) Specify that the loan collateral should be treated as a quantity of eligible sugar that previously served as loan collateral for a repaid loan; and

(ii) Designate the loan to which the reoffered loan collateral was originally pledged.

(2) The subsequent loan shall have the same maturity date as the original loan.

(3) Loan collateral repledged that was previously redeemed from CCC is not included in determining the total quantity of sugar on which loans have been obtained for purposes of § 1435.104.

(e)(1) Disbursements shall be made without regard to the actual polarity of the sugar pledged as loan collateral but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope.

(2) Adjustments for polarity are only made at the time of loan forfeiture.

(f)(1) Loans will mature at the earlier of:

(i) the end of the 9-month period beginning on the 1st day of the first month after the month in which the loan is made; or

(ii) September 30 following disbursement of the loan.

(2) CCC may accelerate loan maturity dates in accordance with § 1435.107(g).

(g) Processors receiving loans in July, August, or September may repledge the sugar as collateral for a supplemental loan. Such supplemental loan shall:

(1) Be requested by the processor during the following October;

(2) Be recourse or nonrecourse depending on which type of loan is in effect according to § 1435.102;

(3) Be made at the loan rate in effect at the time the supplemental loan is made; and

(4) Mature in 9 months minus the number of whole months that the initial loan was in effect.

(h) No loans will be made after June 30, 2003.

[61 FR 37618, July 18, 1996, as amended at 62 FR 34612, June 27, 1997]

§ 1435.106 Loan maintenance.

(a) All processors receiving loans shall:

(1) Abide by the terms and conditions of the loan application and the note and security agreement; and

(2) Pay interest on the principal at a rate determined in part 1405.

(b) The security interests obtained by CCC as a result of the execution of security agreements by the processors of sugarcane and sugar beets shall be superior to all statutory and common law liens on raw cane sugar and refined beet sugar in favor of the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.

(c) Nonrecourse loan recipients shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processor for processing not less than the minimum payment levels CCC specifies for the applicable crop year when nonrecourse loans are in effect, except that processors who repay a recourse loan within the 30-day period provided for in § 1435.102(b) are not required to pay the minimum payment levels.

(d) A processor shall maintain eligible sugar of sufficient quality and quantity as collateral to satisfy the processor's loan indebtedness to CCC. CCC shall not assume any loss in quantity or quality of the loan collateral.

(1) The borrower is responsible for storage costs through the loan maturity date.

(2) Sugar pledged as loan collateral need not be stored identity preserved.

(3) When the proceeds of the sale of the sugar pledged as loan collateral are needed to repay all or part of a sugar

loan, the processor may request and obtain prior written approval from the loanmaking office by executing a Market Authorization for Loan Collateral (form CCC–681–1) to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer prior to repayment of the loan. Any such approval shall be subject to the terms and conditions set forth in the applicable form and the loanmaking office shall not approve such a request unless the buyer of the sugar agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding the sugar being sold. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the sugar; or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(4) If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for a recourse or nonrecourse loan is less than the loan quantity, because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call the loan and other outstanding loans. Such determination shall result in the processor being ineligible for recourse loans for the remainder of that crop year and through the next crop year.

§ 1435.107 Loan settlement and foreclosure.

(a) A processor may, at any time prior to loan maturity, redeem all or any part of the loan collateral by paying CCC the applicable principal and interest.

(b) Recourse loan recipients must pay CCC the principal and interest on the loan and redeem their sugar collateral no later than the loan maturity date.

(c) Forfeiture will be accepted as payment in full of the principal and interest due under a nonrecourse loan, applicable to the quantity of sugar delivered, subject to adjustment for polarity, if the processor:

(1) Notifies in writing the appropriate loanmaking office of the processor's intent to forfeit the loan collateral, states the amount of loan collateral intended to be forfeited, and delivers the notice to the loanmaking office no later than 30 days prior to the maturity date of the loan;

(2) Executes a storage agreement, as CCC prescribes, prior to forfeiture or delivers the loan collateral to a CCC-approved storage facility upon forfeiture; and

(3) Pays the following forfeiture penalty on sugar pledged as collateral at the time of forfeiture:

(i) The penalty for raw cane sugar is 1 cent per pound; and

(ii) The penalty for beet sugar is 1.072 cents per pound; and

(4) Reduces payments owed producers by the producer's share of the aggregate loan forfeiture penalty incurred by the processor. The producer's share of the aggregate loan forfeiture penalty is calculated as the producer's share of the net selling price of the processor's sugar, provided for explicitly or implicitly in the contract between producers and processor, times the aggregate loan forfeiture penalty.

(d) Even though a processor gave notice of intent to forfeit, the processor may, at any time prior to maturity of the nonrecourse loan, redeem the loan collateral in accordance with this section.

(e) CCC shall not accept delivery of sugar in settlement of a nonrecourse loan in excess of:

(1) the amount specified in the notice of intent to forfeit; or

(2) the quantity of sugar which is shown on the note and security agreement minus any quantity that was redeemed or released for removal in accordance with this section.

(f) If the processor does not redeem any amount of the nonrecourse loan collateral and the conditions of paragraph (c) of this section have been fulfilled, the unredeemed nonrecourse loan collateral will, without further CCC or processor action, be deemed to have been forfeited and delivered to CCC in-store at the processor's storage facility on the day following the maturity date of the loan. Title, all rights, and interest to the sugar immediately vests in CCC upon delivery.

(g)(1) CCC may at any time accelerate the date for loan repayment indebtedness, including interest. CCC will give the processor notice of such

acceleration at least 15 days in advance of the accelerated loan maturity date.

(2) In the event of any such acceleration of nonrecourse loans, the required notice of intent to forfeit, as set forth in paragraph (d)(1), may be given at any time prior to the accelerated maturity date.

(h) If a processor's recourse or nonrecourse loan indebtedness is not satisfied in accordance with the provisions of this section:

(1) Interest on the processor's indebtedness shall accrue as specified in part 1403 in this chapter and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale; and

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges incurred by the CCC.

§ 1435.108 Storage facility requirements.

(a) Sugar forfeited to CCC must be delivered in or to a CCC-approved storage facility.

(1) Eligible storage is any storage facility which:

(i) Meets CCC Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (part 1423 of this chapter); and

(ii) Is placed under a storage contract with CCC.

(2) If the sugar is delivered in or to an ineligible storage facility, the processor is responsible for all costs incurred in moving the sugar to an eligible storage facility.

(b) CCC has the right to inspect loan collateral or CCC-owned sugar and the storage facilities in which the sugar is situated at any time.

(c) Regardless of whether CCC inspected the sugar and storage facility prior to delivery, the processor is liable to CCC for any damages CCC suffers if:

(1) The processor delivers ineligible sugar to CCC; or

(2) The processor delivers sugar into ineligible storage.

§ 1435.109 Processor storage agreement.

(a) By executing a note and security agreement, the processor agrees to store any forfeited loan collateral on behalf of CCC under the terms and conditions specified in this subpart and any storage agreement entered into between CCC and the processor. Should the terms of these regulations and the terms of the storage agreement conflict, the terms set forth in the regulations are applicable.

(b) The storing processor is responsible for maintaining the quality and condition of CCC-owned sugar. The processor is liable to CCC for any damages CCC suffers due to the failure of the processor to load out sugar meeting the criteria set forth in § 1435.104(d). Also, the processor shall store the sugar in the eligible storage where delivered for as long as CCC deems necessary.

(c) If a processor forfeits loan collateral and CCC and the processor fails to enter into a storage contract, the processor is responsible for all costs incurred in moving the sugar to an eligible storage facility.

(d) A processor storing CCC-owned sugar is responsible for all load-out expenses in the event that CCC sells the sugar.

(e) CCC shall make monthly storage payments to the processor for the period of time the processor stores the forfeited sugar. The storage payment rate shall be as CCC and the processor agree, and according to the terms and conditions CCC sets forth when executing a note and security agreement.

§ 1435.110 Miscellaneous provisions.

(a) The regulations issued by the Secretary governing setoffs and withholding set forth at part 3 of this title and part 1403 of this chapter are applicable to the program set forth in this subpart.

(b) A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations at 7 CFR part 780.

(c) Any false certification, including those made for the purpose of enabling a processor to obtain a loan to which it is not entitled, will subject the person

making such certification to liability under applicable Federal civil and criminal statutes.

§ 1435.111 Applicable forms.

CCC forms used for this program are available from the appropriate State committee or designated county committee. For purposes of any CCC form that refers to program participation by producers, the term ''producer'' shall be taken to mean ''processor.''

Subpart C—Sugar Marketing Assessments

§ 1435.200 General statement.

(a) This subpart sets forth the terms and conditions for the payment to CCC of marketing assessments for beet sugar and raw cane sugar marketed during fiscal years 1996 through 2003.

(b) Except as provided in § 1435.205, the marketing assessment applies to:

(1) First processor marketings of all raw cane sugar processed during fiscal years 1996 through 2003 from domestically-produced sugarcane or sugarcane molasses, and

(2) First processor marketings of all beet sugar processed during fiscal years 1996 through 2003 from domestically-produced sugar beets or sugar beet molasses.

[61 FR 37618, July 18, 1996, as amended at 65 FR 7956, Feb. 16, 2000]

§ 1435.201 Marketing assessment rates.

(a) For marketings during fiscal year 1996, the assessment rate per pound of beet sugar is 0.2123 cents per pound. The assessment rate for fiscal years 1997 through 2003 is 0.2654 cents per pound.

(b) For marketings during fiscal year 1996, the assessment rate per pound of raw cane sugar is 0.1980 cents per pound, raw value. The assessment rate for fiscal years 1997 through 2003 is 0.2475 cents per pound, raw value.

§ 1435.202 Remittance.

(a) The monthly amount of the beet sugar marketing assessment to be remitted to CCC is determined by multiplying the number of pounds of beet sugar marketed in the calendar month by the assessment rate.

(b) The monthly amount of the marketing assessment on raw cane sugar to be remitted to CCC is determined by multiplying the number of pounds, raw value, of raw cane sugar marketed, or estimated to be marketed in accordance with (e)(1) of this section, in the calendar month by the assessment rate.

(c)(1) First processors shall remit marketing assessments to CCC no later than the 30th calendar day following the end of the month in which the beet sugar or raw cane sugar subject to the assessment was marketed.

(2) Mailed remittances will be considered timely if they are postmarked not later than the 25th calendar day following the month in which the beet sugar or cane sugar subject to the assessment was marketed.

(3) CCC must receive electronic remittances by the 30th calendar day following the month in which the beet sugar or raw cane sugar subject to the assessment was marketed.

(4) Any processor who fails to file a remittance by the due date shall be assessed a civil penalty and interest in accordance with § 1435.203.

(d)(1) Except as provided in § 1435.205, first processors shall prepare and submit a fully and accurately completed form CCC–80 each month that shows:

(i) Beet sugar marketings during the previous calendar month; and

(ii) Raw cane sugar, raw value, marketings during the previous calendar month.

(2) First processors who do not operate on a calendar month basis may pay their assessments based on marketings on several extra days or fewer days than the calendar month reporting period, consistent with the processor's standard accounting period. However:

(i) Assessments must be paid on all marketings of specific crop year sugar in the fiscal year it is due; and

(ii) The marketing assessments must be remitted monthly and by the dates specified in this section.

(3) The entire assessment that is due and payable shall be remitted with the Form CCC–80.

(e)(1) If, when a raw cane sugar assessment is due and payable, the first processor cannot determine the exact raw value of such sugar, an estimate of

raw value based on the recent experience of the processor shall be made and the assessment submitted on the estimated quantity.

(2) Whenever an assessment is based on an estimate of raw value pursuant to (e)(1), any necessary adjustments to the quantity of raw sugar subject to the assessment shall be made by filing a corrected Form CCC–80 no later than 30 calendar days after the last day of the month in which the estimated assessment was paid. If, according to the corrected Form CCC–80:

(i) The assessment was underpaid, the first processor shall remit the additional assessment due with the corrected Form CCC–80, and

(ii) If the assessment was overpaid, the first processor shall subtract the overpayment from any assessment due at the time the corrected Form CCC–80 is filed, or if none is due at that time, from the assessment next due.

(f) By October 30 of each year, first processors shall determine the quantity of beet sugar or raw cane sugar on hand that was produced during the preceding fiscal year but not marketed by September 30 of such preceding fiscal year and shall remit a marketing assessment to CCC as if the sugar had been marketed in September of such preceding fiscal year. Such sugar is not subject to a second assessment when it is marketed.

(g) First processors shall send remittances and CCC–80 forms as CCC specifies.

[61 FR 37618, July 18, 1996, as amended at 65 FR 7956, Feb. 16, 2000]

§ 1435.203 Civil penalties and interest.

(a) A first processor is liable for a civil penalty of up to 100 percent of the relevant national average loan rate times the marketings of beet sugar or raw cane sugar involved in the violation if the processor:

(1) Fails to remit, on a timely basis, the entire amount of any marketing assessment in accordance with this subpart;

(2) Fails to submit Form CCC–80 fully and accurately completed; or

(3) Fails to maintain and permit inspection of records as required by § 1435.204.

(b) In addition to any civil penalty assessed in accordance with this section, interest on unpaid assessments or deficiencies in assessments paid is due and payable at the rate specified in part 1403 of this chapter beginning on the 1st day of the month after the marketing assessment was due in accordance with § 1435.203. Interest shall continue to accrue until such amount is paid. However, if full payment of an assessment is received within 30 calendar days of the date on which the assessment was due, no interest shall apply.

(c) The Controller, CCC, shall assess civil penalties and interest.

(d) Affected first processors may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification by the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW, Washington, D.C. 20250–0501.

(e) After reconsideration, affected first processors may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification by the Executive Vice President, CCC, of an affirmation of the assessment of civil penalties, with the National Appeals Division in accordance with part 780 of this chapter.

§ 1435.204 Refunds.

Marketing assessments are nonrefundable. However, upon presentation of evidence acceptable to the Controller, CCC, adjustments to an assessment may be made by CCC to reflect the actual marketings of beet sugar or raw cane sugar, or a first processor may adjust the amount of the assessment due in accordance with § 1435.202.

§ 1435.205 Special rules for fiscal years 2000 and 2001.

(a) First processors are not required to pay the marketing assessments provided for in this subpart that would otherwise be due under this part during the period from October 22, 1999 through September 30, 2001;

(b) First processors are not required to prepare and submit form CCC–80 pursuant to § 1435.202(d)(1) during the

period from October 22, 1999 through September 30, 2001; and

(c) Sugar in inventory at the end of fiscal year 2001 that is marketed thereafter will be subject to an assessment at the rate that is current at the time of marketing unless that sugar was the subject of a previously paid assessment.

[65 FR 7956, Feb. 16, 2000]

Subpart D—Information Reporting and Recordkeeping Requirements

§ 1435.300 General statement.

(a) Every sugar beet processor, sugarcane processor, and cane sugar refiner shall report, on a monthly basis on CCC required forms, its imports and receipts, processing inputs, production, distribution, stocks, and other information necessary to administer sugar programs.

(b) Any processor must, upon CCC's request, provide such information as CCC deems appropriate for determining regional loan rates.

(c) The sugar information reporting and recordkeeping requirements of this subpart are administered under the general supervision of the Executive Vice President, CCC.

§ 1435.301 Civil penalties.

(a) Any processor or refiner who willfully fails or refuses to furnish the information, or who willfully furnishes false data required under § 1435.300, is subject to a civil penalty of no more than $10,000 for each such violation.

(b) The Controller, CCC, shall assess civil penalties and interest.

(c) Affected first processors may request reconsideration of civil penalties by filing a request, within 30 days of receipt of certified written notification by the Controller, CCC, of such assessment of civil penalties, with the Executive Vice President, CCC, Stop 0501, 1400 Independence Ave. SW, Washington, D.C. 20250–0501.

(d) After reconsideration, affected first processors may appeal civil penalties by filing a notice of appeal, within 30 calendar days of receipt of certified written notification by the Executive Vice President, CCC, of an affirmation of the assessment of civil penalties, with the National Appeals Division in accordance with part 780 of this chapter.

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

Sec.

1436.1 Applicability.
1436.2 Administration.
1436.3 Definitions.
1436.4 Availability of loans.
1436.5 Eligible borrowers.
1436.6 Eligible storage facilities for handling equipment.
1436.7 Term of loan.
1436.8 Security for loan.
1436.9 Loan amount and loan application approvals.
1436.10 Down payment.
1436.11 Disbursements.
1436.12 Interest.
1436.13 Payment of loan.
1436.14 Taxes.
1436.15 Maintenance.
1436.16 Sale or conveyance.
1436.17 Environmental compliance.

AUTHORITY: 15 U.S.C. 714 *et seq.*

SOURCE: 65 FR 30348, May 11, 2000, unless otherwise noted.

§ 1436.1 Applicability.

The regulations of this part provide the terms and conditions under which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Because liens and security interests related to this activity may be governed by state law, CCC may adapt certain procedures relating to those issues that may vary between states.

§ 1436.2 Administration.

(a) The Farm Storage Facility Loan Program shall be administered under the general supervision of the Executive Vice President, CCC or designee and shall be carried out in the field by State FSA committees, county FSA committees and FSA employees.

(b) State FSA committees, county FSA committees and FSA employees, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State FSA committee shall take any action required by these regulations that has not been taken by the

county committee. The State FSA committee shall also:

(1) Correct, or require the county FSA committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part; and

(2) Require the county FSA committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county FSA committee shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county FSA committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county FSA committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Farm Storage Facility Loan Program.

(f) A representative of CCC may execute Farm Storage Facility Loan Program applications and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) The Deputy Administrator may suspend this program at any time when it appears that there is no shortage of storage that needs to be addressed or where some other reason shall arise for which it appears that the program goals can be achieved more efficiently in a manner different from that provided for this part.

§ 1436.3 Definitions.

The following definitions shall be applicable to the program authorized by this part and will be used in all aspects of administering this program:

Aggregate outstanding balance means the sum of the outstanding balances of all loans disbursed to the applicant.

Assumption means the act or agreement by which one borrower takes over or assumes the mortgage debt of another borrower.

Collateral means the storage structure, drying equipment or handling equipment securing the loan.

Consent, disclaimer, severance, or subordination agreement means an agreement under which a party may consent to the security interest of another in property, disclaim security interest in property, or subordinate security interest in property to the interest of another party.

Facility loan commodity means wheat, rice, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, other oilseeds as determined and announced by CCC, corn, grain sorghum, oats, or barley harvested as whole grain.

Financing statement. means a document that gives legal notice of a lien on chattel property when properly filed or recorded.

Non-movable or non-salable collateral means either collateral the county committee determines cannot be sold and moved to a new location because of the type of construction or collateral that has deteriorated to the point that it has no sale recovery value.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise, or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien in the United States.

Uniform Commercial Code means the multi-state code of laws covering commercial transactions such as sales, negotiable instruments, and secured transactions.

§ 1436.4 Availability of loans.

(a) An application for a loan shall be submitted to the administrative county office that maintains the records of the farm or farms to which the application applies. Upon request, the applicant shall furnish information and documents as the state or county committee deems reasonably necessary to support the application. This may include financial statements, receipted

bills, invoices, purchase orders, specifications, drawings, plats, or written authorization of ingress and egress.

(b) Producers who authorize actions without an approved loan, do so at their own risk and without creating any liability on behalf of CCC except for producers who between February 2, 2000 and May 11, 2000 took action based on the announcement of the program. Such action may include, but is not limited to, entering into purchase contracts, purchases of materials, taking delivery of parts, site preparation, and construction.

§ 1436.5 Eligible borrowers.

(a) The term ''eligible borrower'' means any person who, as landowner, landlord, operator, producer, tenant, leaseholder, or sharecropper:

(1) Has a satisfactory credit history, and demonstrates an ability to repay the debt arising under this program;

(2) Has no delinquent Federal debt defined by the Debt Collection Improvement Act of 1996;

(3) Is a producer of a facility loan commodity;

(4) Demonstrates a need for increased storage capacity;

(5) Provides proof of crop insurance from FCIC or a private company;

(6) Is in compliance with USDA provisions for highly erodible land and wetlands conservation according to 7 CFR part 12;

(7) Demonstrates compliance with any applicable local zoning, land use, and building codes for the applicable farm storage facility structures;

(8) Provides proof of flood insurance if CCC determines such insurance is necessary to protect the interests of CCC, and proof of all peril structural insurance, to CCC annually; and

(9) Demonstrates compliance with the National Environmental Policy Act regulations at 40 CFR, parts 1500 through 1508.

(b) [Reserved]

§ 1436.6 Eligible storage facilities for handling equipment.

(a) Loans may be made only for the purchase and installation of eligible storage facilities and permanently affixed drying and handling equipment, or for the remodeling of existing storage facilities or permanently affixed drying and handling equipment as provided in this section. Eligible storage and handling facilities shall include the following:

(1) New conventional-type cribs or bins designed and engineered for whole grain storage and having a useful life of at least 10 years;

(2) Oxygen-limiting and other upright silo-type structures designed for whole grain storage and having a useful life of at least 10 years; and

(3) Flat-type storage structures for which the primary use is to store whole grain.

(b) The calculation of the loan amount may include costs associated with building or improving an eligible storage and handling facility, including:

(1) Permanently affixed grain handling equipment and grain drying equipment, including perforated floors considered to be essential to the proper functioning of the grain storage system;

(2) Safety equipment such as lighting, inside and outside ladders;

(3) Equipment to improve, maintain, or monitor the quality of stored grain, such as cleaners, moisture testers, and heat detectors;

(4) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the grain storage and handling equipment; and

(5) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the grain storage and handling equipment.

(c) Ineligible storage and handling equipment with respect to which no loans for installation or related costs shall be disbursed under this part include:

(1) Portable grain drying equipment and portable augers;

(2) Structures of a temporary nature that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(3) Structures that are bunker-type, horizontal, or open silos;

(4) Structures that are not suitable for storing the facility loan commodities for which a need is determined; and

(5) Storage structures to be used for commercial purposes. Commercial purpose is defined as the storage and handling of grain, whether paid or unpaid, for persons other than the loan applicant. State FSA committees may allow, subject to the approval of the Deputy Administrator, Farm Programs, FSA, exceptions to this requirement if an applicant is otherwise eligible and the intent and purpose of the Farm Storage Facility Loan program is being met. Any facility that is in working proximity to any commercial storage operation, shall be considered to be part of a commercial storage operation.

(d) Loans may be approved for financing additions to more modifications of an existing storage facility to increase storage capacity if the county FSA committee determines that the modification is necessary to increase the storage capacity of the unit and is not for maintenance, repair, or replacement of items such as motors, fans, or wiring.

§ 1436.7 Term of loan.

The maximum term of the loan shall be 7 years from the date of execution of a promissory note and security agreement. No extensions of the loan term will be granted.

§ 1436.8 Security for loan.

(a) All loans shall be secured by a promissory note and security agreement covering the farm storage facility. The promissory note and security agreement shall grant CCC a security interest in the collateral and shall be perfected in the manner specified in accordance with applicable state law. CCC's security interest in the collateral shall constitute the sole security interest in such collateral except for prior liens on the underlying realty that by operation of law attaches to the collateral if it is or becomes a fixture. If any such prior lien on the realty will attach to the collateral, a waiver, severance, or subordination of such lien must be obtained in writing from each person having an interest in the real estate on which the collateral is to be located. No additional liens or encumbrances may be placed on the storage facility after the loan is approved unless CCC approves otherwise in writing.

(b) A lien on the real estate on which the farm storage facility is located will be required on all loans in the form of a real estate mortgage, deed of trust, or other security instrument approved by the CCC. For loan amounts exceeding $50,000, CCC's interest in the real estate shall be superior to all other lien holders. If the real estate is covered by a prior lien, a lien may be obtained by means of a subordination agreement prescribed by CCC. CCC will not require such an agreement from any agency of the Department of Agriculture.

(c) Real estate liens may cover an acreage of land separate from the collateral if a lien on the underlying real estate is not feasible and if:

(1) The borrower owns the separate acreage; and

(2) The acreage is large and valuable enough, in the approving authority's opinion, to insure repayment of the loan.

(d) Notwithstanding paragraphs (a), (b) and (c) of this section, a borrower, in lieu of such liens as are otherwise required by those paragraphs, may provide a letter of credit, bond, or other form of security, as approved by CCC.

(e) If an existing structure is remodeled and an addition becomes an attached, integral part of the existing storage structure, CCC's security interest shall include the existing storage structure.

(f) The cost of filing and recording all real estate liens and later subordinations will be paid by the borrower. CCC shall pay such costs relating to filing and recording financing statements.

§ 1436.9 Loan amount and loan application approvals.

(a) The cost on which the loan shall be based is the net cost of the eligible facility, accessories, and services to the applicant after discounts and rebates, not to exceed a maximum per-bushel cost established by the State FSA committee.

(b) The net cost for storage and handling equipment may include purchase price, sales tax, shipping, and delivery charges. The net cost shall not include secondhand material or any other item that is determined by the approving authority to be ineligible for loan.

(c) The principal amount of any farm storage facility loan shall be 75 percent of the net cost of the applicant's needed storage or handling equipment not to exceed $100,000. Borrowers are limited to obtaining one loan per fiscal year under this part.

(d) The aggregate outstanding balance of all facility loans for any one borrower may not exceed $100,000.

(e) When a storage structure has a larger capacity than the applicant's needed capacity, as determined by CCC, the net cost eligible for a loan shall be prorated. Only costs associated with the applicant's needed storage capacity will be loan-eligible.

(f) The county FSA committee may approve applications, if loan funds are available, up to the maximum approval amount unless the State FSA committee establishes a lower limit for country FSA committee approval authority.

(g) Loan approvals will expire four months after the date of approval unless extended in writing for an additional four months by the State FSA committee.

§ 1436.10 Down payment.

(a) A minimum down payment representing the difference between the net cost of the storage facility and the amount of the loan determined in accordance with § 1436.9 shall be made by the loan applicant to the supplier or contractor before the loan is disbursed.

(b) The down payment shall be in cash unless some other form of payment is approved by CCC.

(c) The down payment may not include any trade-in, discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.

§ 1436.11 Disbursement.

(a) Disbursement of the loan by CCC will be made when the farm storage facility has been delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility.

(b) Disbursement will be made only if the borrower furnishes satisfactory evidence of the total cost of the facility and payment of all debts on the facility in excess of the amount of the loan.

(c) Disbursement may be made jointly to the borrower and the contractor or supplier, except disbursement may be made to the borrower if CCC determines the borrower has paid the contractor or supplier all amounts that are due and owing with respect to the facility.

§ 1436.12 Interest.

(a) Loans shall bear interest at the rate equivalent to the rate of interest charged on Treasury securities of comparable maturity on the date the loan is approved.

(b) The interest rate for each loan will remain in effect for the term of the loan.

(c) The loan applicant shall pay a non-refundable application fee of at least $45 to CCC

§ 1436.13 Payment of loan.

(a) Equal installments of principal plus interest will be amortized over the loan term. Installments are due and payable by no later than the last day of each 12 month period of the loan, until the principal plus interest has been paid in full.

(b) The payment of each installment may be by cash, money order, wire transfer, or by personal, certified, or cashier's check. Repayment shall be applied first to accrued interest and then to principal.

(c) A claim will be established in accordance with 7 CFR part 1403 for the principal and accrued interest amount due and late payment interest for any installment that is not paid within 30 days after the due and payable date.

(d) Loan amounts outstanding, whether or not overdue, may be collected from payments that the borrower may otherwise be due to receive as marketing loan gains or other payments under 7 CFR part 1421 or 7 CFR part 1427. In the even that a claim is established against a borrower for any amount due under this part, the provisions of 7 CFR part 1403 may be used to

recover the debt from other Federal payments or loans.

(e) CCC may declare the entire indebtedness immediately due and payable if the borrower violates any of the terms and conditions of this part, fails to pay any installment on time, or breaches any of the terms and conditions of any of the instruments executed in connection with the loan, or if the collateral is used in connection with any unauthorized commercial operation including, but not limited to, elevators, warehouses, dryers or processing plants, during the life of the loan.

(f) The loan may be paid in full or in part at any time before maturity.

(g) Upon payment of a loan, CCC shall release CCC's security interest in the collateral.

§ 1436.14 Taxes.

The borrower must pay all real and personal property taxes that may affect CCC's security interest in all collateral securing the note evidencing the loan. To protect its interests, CCC may pay any unpaid taxes with respect to the collateral securing a loan made in accordance with this part, and if CCC does so, the borrower shall reimburse CCC for such payment, and if unpaid by the borrower, such debt shall become part of the current installment due.

§ 1436.15 Maintenance.

(a) The borrower must maintain the loan collateral in a condition suitable for the storage of one or more of the facility loan commodities.

(b) Until the loan has been repaid, the borrower shall be liable for all damages to or destruction of the collateral. CCC shall not assume any loss of the loan collateral.

(c) CCC shall conduct annual collateral checks to insure compliance with this section.

(d) Structures must be insured against all perils in all cases and must also be insured against flooding if the structure is located in a flood plain, as determined by CCC. Proof of flood insurance, if required, and proof of all peril structural insurance, must be provided to CCC annually. CCC must be listed as a loss payee on all peril and flood insurance policies.

(e) CCC shall have rights in ingress and egress where the facility is located. Failure of the borrower to secure such access will render a borrower ineligible for the loan and, if a loan has already been made shall constitute a loan violation for which the remaining balance of the loan shall became due immediately.

§ 1436.16 Sale or conveyance.

(a) The collateral or land securing a loan may be sold by CCC whenever CCC has declared the entire indebtedness immediately due and owing under this part or when the borrower voluntarily conveys the collateral to CCC before repaying the loan. Before a borrower sells or conveys the facilities or other property securing a loan without repaying the loan in full, the borrower shall obtain approval for the sale or conveyance from the county FSA committee.

(b) Assumption of a farm storage facility loan is permitted.

§ 1436.17 Environmental compliance.

(a) Except as otherwise specified in this section, prior to approval of any farm storage facility loan, an environmental evaluation will be completed to determine if the proposed action will have any adverse impacts on the environmental and cultural resources.

(b) If it is determined that a proposed action or group of proposed actions will not result in any adverse impact, the action will be considered as being categorically excluded for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508.

(c)(1) If adverse environmental impacts, either direct or indirect, are identified, an environmental assessment will be completed in accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA to the extent required by law.

(2) The environmental assessment will be used to develop an action that results in no significant environmental impact on the human environment or cultural resources.

(3) No action will be approved that has been determined to have significant impacts on the human environment or cultural resources.

(d)(1) In order to minimize the exposure to environmental liabilities from the presence of contamination on real estate collateral, an evaluation will be made of the economic and environmental risks to the real estate collateral posted by the presence of hazardous substances and petroleum products.

(2) If the evaluation made under paragraph (d)(1) of this section reveals that the collateral is or may be contaminated, then the applicant will be notified and given an option of offering as collateral other real estate that is free from contamination or remediating the contamination on the original site offered as collateral.

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM REGULATIONS FOR THE 1998 AND SUCCEEDING CROP YEARS

Sec.

1437.1 Applicability.
1437.2 Administration.
1437.3 Definitions.
1437.4 Eligibility.
1437.5 Assistance
1437.6 Area.
1437.7 Yield determinations.
1437.8 Acreage and production reports.
1437.9 Loss requirements.
1437.10 Application for payment and notice of loss.
1437.11 Payments for reduced yield and prevented planting.
1437.12 Multiple benefits.
1437.13 Payment and income limitations.
1437.14 Violations of highly erodible land and wetland conservation provisions.
1437.15 Violations regarding controlled substances.
1437.16 Misrepresentation and scheme or device.
1437.17 Refunds to the CCC.
1437.18 Offsets and assignments.
1437.19 Cumulative liability.
1437.20 Appeals.
1437.21 Estates, trusts, and minors.
1437.22 Death, incompetence, or disappearance.
1437.23 OMB control numbers.

AUTHORITY: 15 U.S.C. 714b and 714c; and 7 U.S.C. 7333

SOURCE: 61 FR 69005, Dec. 31, 1996, unless otherwise noted.

§ 1437.1 Applicability.

(a) For the 1997 and subsequent crop years, NAP is intended to provide eligible producers of eligible crops with protection comparable to the catastrophic risk protection plan of crop insurance. NAP is also designed to help reduce production risks faced by producers of crops for which Federal crop insurance under the Federal Crop Insurance Act, as amended is not available. NAP will reduce financial losses that occur when natural disasters cause a catastrophic loss of production or prevented planting of an eligible crop. Payment eligibility is based on an expected yield for the area and the producer's approved yield based on actual production history, or a transitional yield if sufficient production records are not available. In the case of forage determined by CCC to be predominantly grazed in accordance with § 1437.7(j), payment eligibility is based on an expected stocking level for the area and unit and the actual number of animals grazed and days grazing occurred. Production for both the applicable area expected yield and the individual producer approved yield for the unit or for forage determined by CCC to be predominantly grazed, area and unit expected stocking level must each fall below specified percentages in order to be eligible for payments under this part.

(b) The provisions contained in this part are applicable to each eligible producer and each eligible crop for which catastrophic coverage is not otherwise available.

[62 FR 53930, Oct. 17, 1997]

§ 1437.2 Administration.

(a) NAP is administered under the general supervision of the Executive Vice-President, CCC (Administrator, Farm Service Agency), and shall be carried out by State and county FSA committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations that the county committee has

not taken. The State committee shall also:

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, except statutory deadlines, and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(f) The State committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendations must be approved by the Deputy Administrator for Farm Programs unless the State committee has been specifically delegated authority under paragraph (h) of this section.

(g) Except when a State committee has been authorized to approve NAP prices and yields according to paragraph (h) of this section, the Deputy Administrator for Farm Programs shall approve all yields and prices under this part.

(h) The Deputy Administrator for Farm Programs, may delegate to State committees authority to make area, price, and yield determinations specified in paragraphs (f) and (g) of this section. The delegation shall be in writing. State committees authorized and delegated to make area determinations referenced in paragraph (f) may do so only if the entire proposed NAP area resides entirely within the State or geographical region for which the State committee is responsible. If an area delineated according to §1437.6 is both within and outside the region governed by the State committee, the Deputy Administrator for Farm Programs must approve the area. This decision to delegate or revoke delegated authority to any State committee or other FSA official to make any determination referenced in either paragraph (f) or (g) of this section is solely at the discretion of the Deputy Administrator for Farm Program and is not subject to administrative review.

[61 FR 69005, Dec. 31, 1996, as amended at 64 FR 17272, Apr. 9, 1999]

§1437.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the noninsured crop disaster assistance program. The terms defined in part 718 of this title and 1400 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Act means the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127 (7 U.S.C. 7201 *et seq.*).

Actual production history means the history determined in accordance with part 400, subpart G, of this title, except that when referring to NAP the terms of subpart G will mean as follows:

Insurance terms	NAP terms
Agent	Local office representative.
Claim	Application for payment.
Claim for indemnity	Application for payment.
Indemnity payment	NAP payment.
Insurable acreage	Eligible acreage.
Insurable cause	Natural disaster.
Insurable crop	Eligible crop.
Insurance company	Provider.
Insurance purposes	NAP purposes.
Insured	Eligible producer.
Insured producer	Eligible producer.
Uninsurable acreage	Ineligible acreage.
Uninsurable production	Ineligible production.
Uninsured cause of loss	Assigned production appraisal
Uninsured production	Ineligible production

Animal unit (AU) means an animal with daily energy requirement equating to 15.7 pounds of corn.

Animal unit day (AUD) means an expression of an expected or actual stocking rate.

Approved yield means an actual production history yield calculated and approved by CCC, used to determine

any NAP payment in accordance with part 400, subpart G, of this title.

Aquacultural species means any species of aquatic organism grown as food for human consumption, or fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment. Eligible aquacultural species must be seeded in the aquacultural facility and not be growing naturally in the facility and must be planted or seeded in containers, wire baskets, net pens, or similar devices designed for the protection and containment of the seeded aquacultural species.

Area means the geographic region recommended by the State FSA committee, and approved by CCC in accordance with §1437.6, where a natural disaster has occurred which may qualify producers in the area for NAP payments.

Assigned yield means a yield assigned for a crop year in the base period, in accordance with part 400, subpart G, of this title, if the producer does not file an acceptable production report by the production reporting date.

Average market price means the price, or dollar equivalent on an appropriate basis for an eligible crop established by CCC for determining payment amounts under NAP; for example, pound, bushel, ton, and AUD (for forage determined by CCC to be predominantly grazed). Such price will be on a harvested basis without the inclusion of transportation, storage, processing, packing, marketing or other post-harvest expenses and will be based, in part, on historical data.

Carrying capacity means the stocking rate, as determined by CCC, expressed as acres per animal unit (AC/AU) or reciprocal, which is consistent with maintaining or improving vegetation or related resources.

Catastrophic coverage means a catastrophic risk protection plan of insurance offered by FCIC in accordance with part 402 of this title.

CCC means the Commodity Credit Corporation, a wholly owned Government corporation within the United States Department of Agriculture.

County expected yield means the eligible crop yield established by the State FSA committee and approved by CCC for the county. Such yield information may be obtained from National Agricultural Statistics Service, Cooperative States Research, Education, and Extension Service, credible nongovernmental studies, yields in similar areas, and similar reference material. For planted annual crops, such yield will be based on the acreage planted for harvest.

Crop year means the period of time within which the crop is normally grown and designated by the calendar year in which the crop is normally harvested in the area. For crops harvested over two calendar years, the crop year will be the calendar year in which the majority of the crop would have been harvested. For crops grown over more than two calendar years, each year in the growing period will be considered as a separate crop year designated by the calendar year in which the crop sustained a loss. For crops for which catastrophic coverage is available, the crop year will be as defined by such coverage.

Eligible crop means an agricultural commodity for which catastrophic coverage is not available and which is commercially produced for food or fiber as specified in this part. Eligible crop will also include floriculture, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), and industrial crops. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted, each planting may be considered a different crop for determining payments under this part as determined by CCC. In the case of a crop, except for forage determined by CCC to be predominantly grazed, that has different varieties or types, each variety or type may be considered a separate crop for determining payments under this part, if CCC determines there is a significant difference in price or yield between the varieties or types. For the 1996 and subsequent crop years, a seed crop may be viewed as a separate crop, as determined by CCC, if all the following apply: The specific crop acreage

is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use; there is no possibility of other commercial uses of production from the seed crop acreage without regard to market conditions; and the crop acreage planted, or intended to be planted, with an intended use of seed must have a growing period uniquely conducive to the production of commercial seed and such growing period is not conducive to the production of any other intended use. The unique growing period necessary for successful commercial seed production must be something that is physiologically required for the production of commercial seed (i.e. vernalization in a biennial crop such as carrots and onions) and where such physiological event renders the possibility of production of any other use of the crop acreage improbable. Commercial seed intended uses not meeting the aforementioned criteria shall be viewed as an intended use and a single crop together with all other intended uses of the crop type or variety.

Expected area yield means the eligible crop yield established and approved by CCC for the geographic area.

Floriculture means cut flowers or similar products of annual and perennial flowering plants grown under glass, fiberglass and other rigid plastics, film plastic, shade cloth, natural shade, other shade, and outdoor in a container or controlled environment for commercial sale.

Forage means land covered with grass or other similar herbaceous vegetation not of a woody plant species, produced under such range management practices as are necessary to sustain sufficient quality and quantity of grass or similar vegetation each year to be suitable for grazing or mechanical harvest to feed livestock in a commercial operation. NAP benefits for forage produced on Federal or State owned lands are available only for seeded forage.

Good farming practices means the cultural practices generally used in the area for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. The practices are normally those recognized by Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the area.

Grazing days means the number of days used in the calculation of the carrying capacity for each forage species or type or variety determined by CCC to be predominantly grazed.

Harvested means a single harvest crop is considered harvested when the producer has, by hand or mechanically, or by grazing of livestock, removed the crop from the field. Crops with multiple harvests in 1 year or harvested over multiple years are considered harvested when the producer has, by hand or mechanically removed at least one mature crop from the field. The mechanically harvested crop is considered harvested once it is removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazing is not considered harvesting for the purpose of determining an unharvested or prevented planting payment factor.

Industrial crop means castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago, ovato, sesame, and other crops specifically designated by CCC that are either food or fiber or are used in food or fiber applications.

Livestock means any farm or other animal excluding aquacultural species and, including but not limited to domestic avian, ruminant, equine, and swine species grown or maintained for any purpose.

Local office means the FSA office or other USDA office designated by CCC.

Native forage means grass or other vegetation occurring naturally without seeding.

Natural disaster means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or adverse natural occurrence such as earthquake, flood, or volcanic eruption; or related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring prior to or during harvest that directly causes,

accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by the Secretary.

Ornamental fish means a decorative fish produced in a commercial fishery for sale.

Ornamental nursery means decorative plants grown in a container or controlled environment for commercial sale.

Ornamental nursery crop means a decorative plant grown in a container or controlled environment for commercial sale.

Prevented planting means the inability to plant a crop with proper equipment during the planting period for the crop or commodity. A producer must prove that the producer intended to plant the eligible crop and that such crop could not be planted due to natural disaster reasonably related to the basis for the area designation under § 1437.6, as determined by the Executive Vice President. The natural disaster that caused the prevented planting must have occurred after the final planting date for the previous crop year and before the final planting date for the crop year in which a request for NAP payment was made. For crops with multiple plantings in a single crop year and one crop has been harvested, the natural disaster must occur, after the harvest of the harvested crop and before the end of the planting period for the next planting of the crop.

Production report means a written record showing the commodity's annual production and used to determine the producer's yield for NAP purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, eligible acreage for perennial crops, and harvested and FCIC or CCC appraised production for the previous crop years. This report must be supported by verifiable written records, measurement of farm-stored production, or by other records of production approved by CCC. Information contained in an application for payment is considered a production report for the unit for the crop year for which the application was filed.

Qualifying gross revenues means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the taxable year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income for the taxable year from all sources.

Reseeded or replanted crop means the same crop planted on the same acreage after the first planting of the crop has failed.

Seed crop means a crop produced for the purpose of, or intended for use as, commercial propagation for sale.

Seeded forage means acreage which is mechanically seeded with grasses or other vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

Share means the producer's percentage of interest in the eligible crop as an owner, operator, or tenant. For the purpose of determining eligibility for payments under this part, the producer's share will not exceed the producer's share at the earlier of the time of loss or the beginning of harvest. Acreage or interest attributed to a spouse, child, or member of the same household may be considered part of the producer's share unless such individual is considered to be a separate person under part 1400 of this chapter.

Stocking rate means the number of animal units grazing or utilizing specific crop acreage for a specific number of days, expressed as animal unit days.

Type and weight range means the identification of animals according to the daily energy requirement, as determined by CCC, necessary to provide the daily maintenance ration, as determined by CCC, of the specific animal.

Type or Variety means a scientifically recognized subspecies of a crop or commodity having a particular characteristic or set of characteristics.

Unit means, for NAP, all acreage of the eligible crop or for ornamental nursery, all eligible plant species and sizes except plant species or sizes for which catastrophic coverage is available, in the county for the crop year:

(1) In which the person has 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

Value loss crop means ornamental nursery, Christmas trees, aquaculture, or other crops as determined by CCC that, due to their unique nature do not lend themselves to yield calculations or expected yield loss situations. Eligibility for a crop categorized as value loss shall be determined based on a loss of value at time of disaster, as determined by CCC.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53930, Oct. 17, 1997; 64 FR 17272, Apr. 9, 1999]

§ 1437.4 Eligibility.

(a) Crops that are eligible for NAP benefits are any commercial agricultural crop (excluding livestock and their by-products), commodity, or acreage of a commodity grown for food or fiber for which catastrophic coverage is not available. Except for ornamental nursery and species or type or variety of a species of forage determined by CCC to be predominantly grazed, different types or varieties of a crop or commodity, may be treated as a separate eligible crop, if CCC determines there is a significant difference in price or yield. For the 1996 and subsequent crop years, as seed crop may be viewed as a separate crop if CCC determines the crop meets the definition of an ''eligible crop'' pursuant to § 1437.3.

(b) NAP payments will be made available for:

(1) Any commercial crop grown for food;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products;

(4) Any commercially produced aquacultural species (including ornamental fish);

(5) Floriculture crops;

(6) Ornamental nursery crops;

(7) Christmas tree crops;

(8) Turfgrass sod;

(9) Industrial crops;

(10) Seed crops, where the propagation stock is commercially produced for sale as seed stock for other eligible NAP crop production; and

(11) Any crop, for which crop insurance under the Federal Crop Insurance Act is available in the county, that is affected by a natural disaster that is not named as an insurable peril under the producer's crop insurance policy.

(c) NAP payments will not be available for any acreage in any area for any crop for which catastrophic coverage is available, unless the loss was caused by a natural disaster that is not covered by catastrophic coverage and all other eligibility requirements under this part are satisfied.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53931, Oct. 17, 1997; 64 FR 17272, Apr. 9, 1999]

§ 1437.5 Assistance.

(a) Producers who are eligible to receive NAP payments for crop years 1996 through 1998 will receive assistance against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 60 percent of the established average market price for the crop.

(b) Producers who are eligible to receive NAP payments after crop year 1998 will receive assistance against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 55 percent of the established average market price for the crop.

(c) CCC will adjust the NAP payment rate for crops that are produced with significant and variable expenses that are not incurred because the crop acreage was prevented from being planted or planted but not harvested.

(d) NAP payments will be determined by unit based on all the acreage and production of the crop and eligible prevented from being planted acreage of the crop.

(e) Each producer's NAP payment will be based on the producer's share of the eligible crop.

(f) Animal Unit Day value will be established by CCC on the basis of a 5 year national average corn price per pound, as determined by CCC, and the daily energy requirement of one beef cow, as determined by CCC.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53931, Oct. 17, 1997]

§ 1437.6 Area.

(a) For the purposes of this part, acreage affected by a natural disaster, or any adjustment thereto, will be included in the area recommended by the state FSA committee and submitted to CCC for approval, regardless of whether the commodity produced on the affected acreage suffered a loss.

(b) Except for eligible areas identified in paragraph (f) of this section, an approved area shall include at least five producers of crops on separate and distinct farms for which the area has been approved for NAP payments. Notwithstanding this provision, CCC may approve an area having fewer than five producers if the Executive Vice President, or a designee, determines that such area will suffer significant economic consequences as a result of the disaster.

(c) An area may be designated as follows:

(1) A county;

(2) Aggregated acreage that is at least 320,000 acres; or

(3) Aggregated acreage with not less than $80 million average value for all crops produced annually.

(d) If the aggregated acreage affected by the natural disaster does not meet the minimum requirement specified in paragraph (c) (2) or (3) of this section, the aggregated acreage will be expanded by adding acres from around the affected acreage, until the minimum requirement is met.

(e) The area may not be defined in any manner that intentionally includes or excludes producers or crops.

(f) Notwithstanding the provisions of paragraphs (a) and (c) of this section, for areas outside the 50 states of the United States, the area shall include 10 or more producers of the crop except CCC may approve an area outside the 50 United States having fewer than 10 producers of the crop for which the area is requested if the Executive Vice President determines that such area will suffer significant economic consequences as a result of the disaster.

§ 1437.7 Yield determinations.

(a) CCC will establish expected area yields or an equivalent measure in the event yield data are not available, for eligible crops for each county or area for which the NAP is available, using available information, which may include, but is not limited to, National Agricultural Statistics Service data, Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance Corporation data, credible nongovernment studies, yields in similar areas, and reported approved yield data. For planted annual crops, such yields will be based on the acreage planted for harvest.

(b) CCC may make county yield adjustments taking into consideration different yield variations due to different farming practices in the county such as: irrigated, nonirrigated, organic, nonorganic, different types and varieties of a crop and intended use.

(c) In establishing expected area yields for eligible crops:

(1) If the approved area corresponds to a single county, the expected area yield will be the yield established by CCC for that county, including any adjustments permitted by this section;

(2) If the approved area encompasses portions of counties or more than one county, the expected area yield will be the weighted average of the yields established by CCC for those counties in the area, including any adjustments permitted by this section; and

(3) CCC may adjust expected area yields if:

(i) The cultural practices, including the age of the planting or plantings, are different from those used to establish the yield; or

(ii) The expected area yield established on a state or county level is determined to be incorrect for the area.

(d) CCC will establish approved yields for purposes of providing assistance under this part. Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of part 400, subpart G, of this title.

(e) The approved yield established for the producer for the year in which the NAP payments are offered will be equal to the average of the consecutive crop year yields, as established by CCC, reported and certified by that producer for that eligible crop.

(f) If a producer receives an assigned yield for a year of natural disaster because production records were not submitted by the production reporting deadline, the producer will be ineligible to receive an assigned yield for the year of the next natural disaster unless adequate production records for the eligible crop from all the interim crop years are provided to the local office. The producer shall receive a zero yield for those years the producer is ineligible to receive an assigned yield.

(g) CCC will select certain producers on a random or targeted basis and require those selected to provide records acceptable to CCC to support the information provided. Producers may also be required to support the yield certification at the time of loss adjustment or on post-audit. Each certification must be supported by records acceptable to CCC. Failure to produce records acceptable to CCC will result in CCC establishing the yield in accordance with actual production history and may subject the producer to criminal and civil false claims actions under various Federal statutes as well as refund of any amount received. In addition, sanctions, as set out at §1437.16, may be imposed for false certification.

(h) Records acceptable to CCC may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable; and

(2) Such documentary evidence as is necessary in order to verify the information provided by the producer if the eligible crop has been sold, fed to livestock, or otherwise disposed of other than through commercial channels such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, provided the records are reliable or verifiable.

(i) Any producer who has a contract to receive a guaranteed payment for production, as opposed to delivery, of an eligible crop will have the production adjusted upward by the amount of the production corresponding to the amount of the contract payment received.

(j)(1) Producers will not be eligible to receive an assigned yield if the acreage of the crop in a county for the crop year has increased by more than 100 percent over any year in the preceding seven crop years, unless:

(i) The producer provides adequate records of production costs, acres planted, and yield for the crop year for which NAP payments are being sought; or

(ii) CCC determines that the records provided under this paragraph are inadequate. CCC may require proof that the eligible crop could have been marketed at a reasonable price had the crop been harvested.

(2) The provisions of this section will not apply if:

(i) The crop has been inspected prior to the occurrence of a loss by a third party acceptable to CCC; or

(ii) The FSA county executive director, with the concurrence of the FSA state director, makes a recommendation for an exemption from the requirements and such recommendation is approved by CCC.

(k) Prior to the beginning of the crop year, CCC in its own discretion will with respect to forage:

(1) Identify each species or type and variety of forage found in the county;

(2) Categorize each species or type and variety of forage identified as either:

(i) Predominantly mechanical harvested, or

(ii) Predominantly grazed;

(3) Establish a carrying capacity for each forage species or type and variety identified and determined by CCC to be predominantly grazed;

(4) Determine total acreage of forage determined by CCC to be predominantly grazed; and

(5) Calculate expected Animal Unit Day by dividing the total acres of forage in the county categorized by CCC as predominantly grazed by the approved carrying capacity and multiplying the result by the number of days of grazing used to determine the carrying capacity.

(l) In the event CCC receives a notice of loss of forage determined by CCC to be predominantly grazed, CCC will:

(1) Calculate utilized Animal Unit Day by dividing the total acres of forage reported to FSA determined by CCC to be predominantly grazed by the reported number of animal units grazed and multiplying the result by the number of days grazing occurred;

(2) Subtract the value of supplemental feed fed to the grazing livestock during the grazing period from the value of the utilized Animal Unit Day, as determined by CCC;

(3) Determine area utilization by dividing total area utilized Animal Unit Day by the expected Animal Unit Day; and

(4) Determine unit utilization by dividing the unit utilized Animal Unit Day by the expected unit Animal Unit Day.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53931, Oct. 17, 1997]

§ 1437.8 Acreage and production reports.

(a) Producers must file one or more acreage reports at the local office no later than the date specified by CCC for each crop the producer wants to insure future eligibility for the NAP program. The acreage report may be filed by the farm operator. Any producer will be bound by the acreage report filed by the farm operator unless the producer files a separate acreage report prior to the acreage reporting date.

(b) Acreage reports required by paragraph (a) must include all of the following information:

(1) All acreage in the county of the eligible crop (for each planting in the event of multiple planting) in which the producer has a share;

(2) The producer's share at the time of planting or the beginning of the crop year;

(3) The FSA farm serial number;

(4) The crop, practice, intended use, and for forage, the predominant species or type and variety and the intended harvest method, i.e. grazing or mechanical harvest.

(5) All persons sharing in the crop (including the identity of any person having an interest in the crop as producer) and the person's employer identification number or social security number, if the person wishes to receive any payment under the Act;

(6) The date the crop was planted; and

(7) Acreage prevented from being planted.

(c) For each crop for which an acreage report is filed in accordance with this section, the producer must report the production for that acreage by the immediately subsequent crop year acreage reporting date for the crop.

(d) A person's failure to submit the required information by the designated acreage reporting dates may result in the denial of payments under this part. If there is a change of ownership, operation, or share within the farming operation after the acreage reporting date, the local office must be notified not later than 30 calendar days after the change and proof of the change must be provided to maintain eligibility for payments under this part.

(e) In lieu of a production report, producers of forage that is predominantly grazed shall, in the crop year in which the producer files a notice of loss, report grazing animals by type and weight range and the number of days grazing occurred, and the amount and type of feed fed such grazing animals during any grazing period within the crop year.

(f) Animal Unit Day adjustments, as determined by CCC, may be calculated when a producer of forage predominantly grazed, provides adequate evidence, as determined by CCC, that unit forage management and maintenance practices provide different carrying capacity than practices generally provided forage acreage used to calculate the approved county expected carrying capacity.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53931, Oct. 17, 1997]

§ 1437.9 Loss requirements.

(a) To qualify for payment under this part, the loss or prevented planting of the eligible crop must be due to a natural disaster.

(b) Assistance under this part will not cover losses due to:

(1) The neglect or malfeasance of the producer;

(2) The failure of the producer to reseed or replant to the same crop in the county where it is practicable to reseed or replant;

(3) The failure of the producer to follow good farming practices for the commodity and practice;

(4) Water contained or released by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of the water;

(5) Failure or breakdown of irrigation equipment or facilities; or

(6) Except for tree crops and perennials, inadequate irrigation resources at the beginning of the crop year.

(c) A producer of an eligible crop will not receive payments under this part unless the projected average or actual yield for the crop, or an equivalent measurement if yield information is not available, in the area falls below 65 percent of the expected area yield. Once this area, and all other, eligibility requirements have been satisfied:

(1) A reduced yield payment will be made to a producer if the total quantity of the eligible crop that the producer is able to harvest on the unit is less than 50 percent of the approved yield for the crop due to natural disaster reasonably related to the basis for the area designation under § 1437.6, factored for the share of the producer for the crop. Production from the entire unit will be used to determine whether the producer qualifies for a payment under this part. The quantity will not be reduced for any quality consideration unless a zero value is established; and

(2) A prevented planting payment under this part will be made if the producer is prevented from planting more than 35 percent of the total eligible acreage intended for planting to the eligible crop. Producers must have intended to plant the crop and prove that they were prevented from planting the crop due to natural disaster reasonably related to the basis for the area designation under § 1437.6, and the producer may be required to prove that such producer had the resources available to plant, grow, and harvest the crop, as applicable.

(d) NAP payments under this part for prevented planting will not be available for:

(1) Tree crops and other perennials, unless the producer can prove resources were available to plant, grow, and harvest the crop, as applicable;

(2) Land that planting history or conservation plans indicate would remain fallow for crop rotation purposes; or

(3) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA, including the Conservation Reserve Program and Wetland Reserve Program.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53932, Oct. 17, 1997]

§ 1437.10 Application for payment and notice of loss.

(a) Any person with a share in the eligible crop who would be entitled to a payment under this part must provide a notice of damage or loss within 15 calendar days after the occurrence of the prevented planting (the end of the planting period) or recognizable damage to the crop. The notice must be filed at the local office serving the area where the producer's unit is located. The farm operator may provide the notice for all producers with an interest in the crop. All producers on a farm will be bound by the operator's filing or failure to file the application for payment unless the individual producers elect to timely file their notice.

(b)(1) Applications for payments under this part must be filed, on Form FCI–74, by the applicant with the local office no later than the first acreage reporting date for the crop in the crop year immediately following the crop year in which the loss occurred.

(2) If the producer chooses not to harvest the crop, all eligible acres and crop units for which the producer intends to make an application for payment must be left intact until the units have been appraised or released by an FCIC or CCC approved loss adjuster.

(3) If the producer harvests the crop, the producer must provide such documentary evidence of crop production as CCC may require which may include leaving representative samples of the crop for inspection.

(c) Failure to make timely application or to supply the required documentary evidence shall result in the denial of payments under this part.

§ 1437.11 Payments for reduced yields and prevented planting.

In the event that the area loss requirement has been satisfied for the crop and:

(a) The producer has sustained a loss in yield in excess of 50 percent of the producer's approved yield established for the crop, the NAP low yield payment will be determined by:

(1) Multiplying the producer's approved yield by the total eligible acreage planted to the eligible crop;

(2) Multiplying the product of paragraph (a)(1) by 50 percent;

(3) Subtracting the total production from the total eligible acreage from the result in paragraph (a)(2);

(4) Multiplying the product of paragraph (a)(3) by the producer's share of the eligible crop;

(5) Multiplying the result of paragraph (a)(4) by the applicable payment factor in accordance with §1437.5(c); and

(6) Multiplying the result in paragraph (a)(5) by:

(i) For the 1996 through 1998 crop years, 60 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC; or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC; or

(b) The producer has been unable to plant at least 35 percent of the acreage intended for the eligible crop, the NAP payment will be determined by:

(1) Multiplying the producer's acreage intended to be planted to the eligible crop by 35 percent;

(2) Subtracting the result in (b)(1) from the number of eligible prevented planting acres as determined in §1437.9(c)(2);

(3) Multiplying the result of (b)(2) by the producer's share of the eligible crop;

(4) Multiplying the producer's approved yield by the result of (b)(3);

(5) Multiplying the result of (b)(4) by the approved prevented planting payment factor in accordance with §1437.5(c); and

(6) Multiplying the result of (b)(5) by:

(i) For the 1996 through 1998 crop years, 60 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC; or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC.

(c) The producer has sustained a loss of forage determined by CCC to be predominantly grazed in accordance with §1437.7(l), in excess of 50 percent of the producer's expected Animal Unit Day established for the unit, the NAP payment will be determined by:

(1) Dividing the unit acreage for each species or type or variety identified on the unit by the approved carrying capacity and multiplying the result by the corresponding grazing days used as the basis for determination of the carrying capacity, totaling the result for each species or types and varieties.

(2) Multiplying the result of paragraph (c)(1) of this section by 50 percent.

(3) Multiplying the number of animals grazed by the daily allowance of corn according to type and weight range and divide the result by pounds of corn CCC determines is necessary to provide the daily energy requirement for one animal unit.

(4) Multiplying the result of paragraph (c)(3) of this section by the number of days grazing occurred to determine gross actual AUD.

(5) Adding AUD for ineligible causes of loss and incidental mechanically harvested Category 1 forage to the result of paragraph (c)(4) of this section.

(6) Subtracting AUD or equivalent value of supplemental feed fed to the grazing livestock during the crop year from the result of paragraph (c)(5) of this section.

(7) Subtracting the result of paragraph (c)(6) of this section from the result of paragraph (c)(2) of this section. If a zero or negative number results, payment cannot be calculated.

(8) Multiplying the positive result of paragraph (c)(7) of this section by:

(i) For the 1997 through 1998 crop years, 60 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC; or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53932, Oct. 17, 1997]

§ 1437.12 Multiple benefits.

If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under this part. The producer is not eligible for both. Such election does not relieve the producer from the requirements of making a production and acreage report. However, if the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may refund the total amount of the payment to the local office from which the payment was received.

§ 1437.13 Payment and income limitations.

(a) NAP payments shall not be made:

(1) In excess of $100,000 per person per crop year under this part, or

(2) To a person who has qualifying gross revenues in excess of $2 million for the most recent tax year preceding the year for which assistance is requested.

(b) Simple interest on payments to the producer which are delayed will be computed on the net payments ultimately found to be due, from and including the 31st day after the latter of the date the producer signs, dates, and submits a properly completed application for payment on the designated form, the date disputed applications are adjudicated, or the date the area and crop is approved for NAP payments. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation or payment.

§ 1437.14 Violations of highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title, apply to this part.

§ 1437.15 Violations regarding controlled substances.

The provisions of § 718.11 of this title apply to this part.

§ 1437.16 Misrepresentation and scheme or device.

(a) If CCC determines that any producer has misrepresented any fact or has knowingly adopted, participated in, or benefitted from, any scheme or device that has the effect of defeating, or is designed to defeat the purpose of this part, such producer will not be eligible to receive any payments applicable to the crop year for which the scheme or device was adopted.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing CCC to make a payment which otherwise would not make under this part:

(1) CCC will withhold all or part of the payment that would otherwise be due.

(2) All amounts paid by CCC to any such producer, applicable to the crop year in which the offense occurred, must be refunded to CCC together with interest and other amounts as determined in accordance with this part.

(3) CCC may impose such other penalties or administrative sanctions as authorized by section § 1437.19.

(c) Scheme and device may include, but is not limited to:

(1) Concealing any information having a bearing on the application of the rules of this part;

(2) Submitting false information to the CCC or any county or state FSA committee; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in the farming operation.

§ 1437.17 Refunds to the CCC.

In the event that there is a failure to comply with any term, requirement, or

condition for payment made in accordance with this part, or the payment was established as a result of erroneous information provided by any person, or was erroneously computed, all such payments or overpayments will be refunded to CCC on demand, plus interest determined in accordance with part 1403 of this chapter.

§ 1437.18 Offsets and assignments.

(a) Except as provided in paragraph (b), any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to payments under this part.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1437.19 Cumulative liability.

(a) The liability of any producer for any payment or refunds, which is determined in accordance with this part to be due to CCC will be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, 641, 651, 1001, 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(b) All producers on the unit receiving payments under this part will be jointly and severally liable to repay any unearned payments under this part.

§ 1437.20 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the eligibility provisions for crops, areas, or producers for which there are no appeal rights because they are determined rules of general applicability, must be in accordance with part 780 of this title.

§ 1437.21 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1437.22 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 18 of this title.

§ 1437.23 OMB control numbers.

These regulations amend the information collection requirements previously approved by the Office of Management and Budget (''OMB'') under OMB control number 0563–0016.

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

Subpart A—General Provisions

Sec.

1439.1 Applicability and general statement.
1439.2 Administration.
1439.3 Definitions.
1439.4 Liens and claims of creditors.
1439.5 Assignments of payments.
1439.6 Appeals.
1439.7 Misrepresentation, scheme or device.
1439.8 Refunds to CCC; joint and several liability.
1439.9 Cumulative liability.
1439.10 Benefits limitation.
1439.11 Gross revenue limitation.
1439.12 Maintenance of books and records.

Subpart B—1998–99 Livestock Assistance Program

1439.101 Applicability.
1439.102 Definitions.
1439.103 Application process.
1439.104 County committee determinations of general applicability.
1439.105 Loss criteria.
1439.106 Livestock producer eligibility.
1439.107 Calculation of assistance.
1439.108 Availability of funds.

Subpart C—Livestock Indemnity Program

1439.201 Applicability.
1439.202 Administration.
1439.203 Definitions.
1439.204 Sign-up period.
1439.205 Proof of loss.
1439.206 Indemnity benefits.
1439.207 Availability of funds.
1439.208 Limitations on payments.

Subpart D—Pasture Recovery Program

1439.301 Administration.
1439.302 Definitions.
1439.303 General description.
1439.304 Eligible persons.
1439.305 Eligible land.
1439.306 Duration of contracts.
1439.307–1439.319 [Reserved]
1439.320 Obligations of participant.
1439.321 Obligations of the Commodity Credit Corporation.
1439.322 Eligible practices.
1439.323–1439.329 [Reserved]
1439.330 Signup.
1439.331 Applications for PRP contracts.
1439.332 PRP contract.
1439.333 Contract modifications.
1439.334–1439.339 [Reserved]
1439.340 Payments.
1439.341 Levels and rates for payments.
1439.342 Method of payment.
1439.344–1439.349 [Reserved]
1439.350 Payments to participants.
1439.351 Violations.
1439.352 Executed PRP contract not in conformity with regulations.
1439.353 Performance based upon advice or action of the Department.
1439.354 Access to land under contract.
1439.355 Miscellaneous.

Subpart E—Livestock Indemnity Program for Contract Growers

1439.401 Applicability.
1439.402 [Reserved]
1439.403 Definitions.
1439.404 Application period.
1439.405 Proof of loss.
1439.406 Indemnity benefits.
1439.407 Proration of claims.
1439.408 Miscellaneous provisions.

Subpart F—2000 Flood Compensation Program

1439.501 Applicability.
1439.502 Administration.
1439.503 Definitions.
1439.504 Application process.
1439.505 County committee determinations of general applicability.
1439.506 Eligible land and loss criteria.
1439.507 Producer eligibility.
1439.508 Calculation of assistance.
1439.509 Availability of funds.

Subparts G–H [Reserved]

Subpart I—American Indian Livestock Feed Program

1439.900 [Reserved]
1439.901 Applicability.
1439.902 Administration.
1439.903 Definitions.
1439.904 Region.
1439.905 Responsibilities.
1439.906 Program availability.
1439.907 Eligibility.
1439.908 Payment application.
1439.909 Payments.
1439.910 Program suspension and termination.
1439.911 Appeals.
1439.912–1439.915 [Reserved]

AUTHORITY: 7 U.S.C. 1427a; 15 U.S.C. 714 et seq.; Sec 1103 Pub. L. 105–277, 112 Stat. 2681–42–44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Sec. 257 Pub. L. 106–224, 114. Stat. 358; Secs. 802, 806, & 813 Pub. L. 106–387, 114 Stat. 1549.

SOURCE: 65 FR 36567, June 8, 2000, unless otherwise noted.

Subpart A—General Provisions

§ 1439.1 Applicability and general statement.

(a) The regulations in this part set forth the terms and conditions applicable to programs that may be made available to livestock producers under various statutory provisions. Unless otherwise specified, the regulations in this subpart shall apply to all programs operated under this part.

(b) The regulations in this part 1439 in effect prior to March 17, 1999, (See 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) are applicable with respect to any emergency livestock assistance program that existed prior to March 17, 1999. The part 1439 regulations in effect on January 1, 2000 (See 7

CFR Parts 1200 to 1599, revised as of January 1, 2000) for the Flood Compensation Program shall continue to apply to all pending or new matters under that program.

(c) Nothing in this subpart shall be read as to require any expenditure of funds for a program in an overall amount greater than that determined to be appropriate by CCC.

§ 1439.2 Administration.

(a) This part shall be administered by CCC through, and as delegated to the Deputy Administrator for Farm Programs under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county committees of the Farm Service Agency of the U.S. Department of Agriculture.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this section to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. The Deputy Administrator may waive or modify deadlines or other program requirements of this part to the extent that such a waiver or modification is otherwise permitted by law and is determined to be appropriate, serves the goals of the program, and does not adversely affect the operation of the program.

§ 1439.3 Definitions.

The definitions set forth in this section shall be applicable to all subparts contained in this part unless otherwise noted, or unless the definitions conflict with the definitions in subparts other than this subpart A, in which case they shall not apply.

Carrying capacity means the number of acres of pasture required to provide 15.7 pounds of feed grain equivalent per day for one animal unit during the period the pasture is normally grazed.

CCC means the Commodity Credit Corporation.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Equine animals used for food or in the production of food means horses, mules, and donkeys that are:

(1) Used commercially for human food;

(2) Maintained for commercial sale to processors of food for human consumption; or

(3) Used in the production of food and fiber on the owner's farm, such as draft horses, or cow ponies.

Executive Vice President means the Executive Vice President, CCC, or a designee of the Executive Vice President.

FSA means the Farm Service Agency.

Livestock producer means a person who is determined to receive 10 percent or more of the person's gross income, as determined by the Secretary, from the production of livestock and is:

(1) A citizen of, or legal resident alien in the United States; or

(2) A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in the United States; any Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*); any Indian organization or entity chartered under the Indian Reorganization Act (25 U.S.C. 461 *et seq.*) or entity chartered under the Indian Reorganization Act; any tribal organization under the

Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 (25 U.S.C. 1451 *et seq.*).

Natural disaster means a generalized disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster.

Person means an individual or entity, including any organization, of any kind, provided that for per-person payment limitations the rules in part 1400 of this chapter shall be determinative in defining who is considered to be a separate person for such purposes.

Poultry means domesticated chickens, including egg-producing poultry, ducks, geese and turkeys.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

Seeded small grain forage crops means wheat, barley, oats, rye, and triticale.

State committee, State office, county committee, or county office, means the respective FSA committee or office.

United States means all fifty states of United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

§ 1439.4 Liens and claims of creditors.

Any payment or benefit or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government.

§ 1439.5 Assignments of payments.

Payments that are earned by a person under this part may be assigned in accordance with the provisions of part 1404 of this chapter and the applicable FSA or CCC forms for assignments.

§ 1439.6 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 780 and 11 of this title.

§ 1439.7 Misrepresentation, scheme or device.

A person shall be ineligible to receive assistance under any program under this part, and be subject to such other remedies as may be allowed by law, if, with respect to such program, it is determined by the State committee or the county committee or an official of FSA that such person has:

(a) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(b) Made any fraudulent representation with respect to such program; or

(c) Misrepresented any fact affecting a program determination.

§ 1439.8 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines

that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be recomputed and any excess refunded with applicable interest.

§ 1439.9 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1439.10 Benefits limitation.

The total amount of benefits that a person, as determined in accordance with part 1400 of this chapter, shall be entitled to receive under any subpart may not exceed $40,000 for any one loss or year. Also, the Deputy Administrator may take such action as needed, whether or not specifically provided for, to avoid a duplication of benefits under the several programs provided for in this part and may impose such cross-program payment limitations as may be consistent with the intent of this section and this part.

§ 1439.11 Gross revenue limitation.

A person, as defined in part 1400 of this chapter, who has annual gross revenue in excess of $2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross revenue means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue from all sources.

§ 1439.12 Maintenance of books and records.

Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain financial books and records that will permit verification of all transactions with respect to the provisions of this part for at least 3 years following the end of the calendar year in which assistance was provided, or for such additional period as CCC may request. Destruction of records after that date shall be at the risk of the producer or other person receiving assistance. An examination of such books and records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

Subpart B—1998–99 Livestock Assistance Program

§ 1439.101 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the 1998 Livestock Assistance Program authorized by Public Law 105–277 and the 1999 Livestock Assistance Program authorized by the Public Law 106–78. Benefits will be provided to eligible livestock producers in the United States but only in counties where a natural disaster occurred, and that were subsequently approved for relief under this part by the Deputy Administrator for Farm Programs. For purposes of reference, the program authorized by Public Law 105–277 shall be referred to in

this subpart as the 1998 LAP program and that administered under Public Law 106–78 shall be referred to in this subpart as the 1999 LAP program.

(b) The two LAP programs provided for in this part will be treated as separate programs for purposes of payment limitations and for other purposes relating to eligibility.

(c) A county must have suffered a 40-percent or greater grazing loss for 3 consecutive months during the 1998 calendar year for 1998 LAP or for 3 consecutive months during the 1999 calendar year for the 1999 LAP, as a result of damage due to a natural disaster as determined by the Deputy Administrator for Farm Programs, or a designee. Grazing losses must have occurred on native and improved pasture with permanent vegetative cover and other crops planted specifically for the sole purpose of providing grazing for livestock, but such losses do not include losses on, or with respect to, seeded small grain forage crops.

(d) To be eligible for assistance under this subpart, a livestock producer's pastures in an eligible county must have suffered at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months during the relevant calendar year. The percent of loss eligible for compensation shall not exceed the maximum percentage of grazing loss for the county as determined by the county committee. In addition, the producer will not be compensated for that part of any loss that would represent payment of a loss greater than 80 percent.

(e) Unless otherwise specified or determined by the Deputy Administrator, a livestock producer is not eligible to receive payments for the same loss under both this subpart and another Federal program.

§ 1439.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart.

Application means the Form CCC–740, Livestock Assistance Program Application. The CCC–740 is available at county FSA offices.

LAP means, depending on the context, either the 1998 Livestock Assistance Program provided for in this subpart, the 1999 Livestock Assistance Program provided for in this subpart, or the overall 1998–99 Livestock Assistance Program provided for in this subpart.

Livestock means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals where such equine animals are used commercially for human food or kept for the production of food or fiber on the owner's farm.

§ 1439.103 Application process.

(a) Livestock producers must submit a completed application prior to the close of business on March 31, 1999, for the 1998 LAP or, for the 1999 LAP, such other date as established by the Deputy Administrator, or by prior rule. The application and any other supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible grazing land or to the county FSA office that maintains the farm records for the livestock producer.

(b) Livestock producers shall certify as to the accuracy of all the information contained in the application, and provide any other information to CCC that the county FSA office or committee deems necessary to determine the livestock producer's eligibility.

§ 1439.104 County committee determinations of general applicability.

(a) County committees shall determine whether due to natural disasters their county has suffered a 40-percent loss affecting pasture and normal grazing crops for at least 3 consecutive months during the calendar year 1998 for the 1998 LAP or calendar year 1999 for the 1999 LAP. In making this determination, county committees, using the best information available from sources including but not limited to: the Extension Service, the Natural Resources Conservation Service; the Palmer Drought Index; and general

knowledge of local rainfall data, pasture losses, grazing livestock movement out of county, abnormal supplemental feeding practices for livestock on pasture and liquidation of grazing livestock, shall determine the percentage of grazing losses for pastures on a county wide basis. The county committee shall submit rainfall data, percentage of grazing losses for each general type of pasture, and the weighted average percentage of grazing loss for the county, with State Committee concurrence, to the Deputy Administrator on Form CCC–654. The maximum grazing losses the county committees shall submit on Form CCC–654 is 80 percent. These determinations shall be subject to review and approval of the Deputy Administrator. For purposes of this subpart, such counties are called ''eligible counties.''

(b) In each county, the county committee shall determine a LAP crop year. The LAP crop year shall be that period of time in a calendar year that begins with the date grazing of new growth pasture normally begins and ends on the date grazing without supplemental feeding normally ends in the county.

(c) In and for each eligible county, the county committee shall determine normal carrying capacities for each type of grazing or pasture during the LAP crop year. The normal carrying capacity for the LAP crop year shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP crop year if a natural disaster had not diminished the production of these grazing crops.

(d) In each eligible county, the county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months during 1998 for the 1998 LAP or during 1999 for the 1999 LAP, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

§ 1439.105 Loss criteria.

(a) The grazing land for which a livestock producer requests benefits must be within the physical boundary of the eligible county. Livestock producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months.

(c) A producer shall certify each type of pasture and percentage of loss suffered by each type on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal.

(d) The county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal. The county committee shall request the producer to provide proof of loss of grazing production if the county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(e) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of grazing loss for the county as determined by the county committee in accordance with § 1439.104(a). Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

(f) Conservation Reserve Program acres released for haying and/or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

§ 1439.106 Livestock producer eligibility.

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners of livestock who themselves provide the pasture or grazing land, including cash leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be the livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased under a contractual agreement that has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned for at least 3 months before becoming eligible for payment.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

§ 1439.107 Calculation of assistance.

(a) The value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned or leased by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(3) The 5-year national average market price for corn (1998 LAP: $2.56 per bushel, or $.0457 per pound; 1999 LAP: $2.47 per bushel or $.0441 per pound); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture; and multiplying:

(2) The result of paragraph (c)(1) of this section for each pasture type; by

(3) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(4) The 5-year national average market price for corn (1998 LAP: $2.56 per bushel, or $.0457 per pound; 1999 LAP: $2.47 per bushel or $.0441071 per pound); by

(5) The applicable number of days in the LAP payment period; by

(6) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(d) The final payment shall be the smaller of paragraph (b) of this section or paragraph (c) of this section multiplied by the national factor if required under § 1439.108. The final payment shall not exceed 50 percent of the smaller of paragraph (b) or (c) of this section determined prior to applying the national factor provided for in § 1439.108.

(e) Seeded small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with

respect to supporting eligible livestock.

(f) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or to breed horses and mules to be used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

§ 1439.108 Availability of funds.

In the event that the total amount of claims submitted under this subpart shall in the case of the 1998 LAP exceed $270 million or in the case of the 1999 LAP exceed the amount determined appropriate by the Deputy Administrator, then such payments under such program shall be reduced by a uniform national percentage. Such payment reductions shall be after the imposition of applicable payment limitation provisions. Total 1999 LAP payments shall be prorated with payments for the Livestock Indemnity Program, Phase II provided for in this part such that total payments under the two programs shall not exceed $200 million minus, as deemed appropriate, other assistance provided to livestock producers unless CCC makes additional funds available.

Subpart C—Livestock Indemnity Program

§ 1439.201 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the original 1999 Livestock Indemnity Program (hereafter ''1999 Livestock Indemnity Program, Phase I'') and the 1999 Livestock Indemnity Program, Phase II. Benefits will be provided under this subpart only for losses (deaths) of livestock occurring as a result of a natural disasters in counties included in the geographic area covered by a qualifying natural disaster declaration:

(1) With respect to the 1999 Livestock Indemnity Program (''LIP''), Phase I, issued by the President of the United States or the Secretary of Agriculture of the United States in the period from May 2, 1998, through May 21, 1999, or

(2) With respect to the 1999 Livestock Indemnity Program (''LIP''), Phase II, issued by the President of the United States or the Secretary of Agriculture, which declaration was requested between May 22, 1999, through December 31, 1999, inclusive, and subsequently approved.

(b) Losses in contiguous counties, or any other counties not the subject of the declaration, will not be compensable. Producers will be compensated by livestock category as established by CCC. The producer's loss must be the result of the declared disaster and in excess of the normal losses, established by CCC, for the producer's livestock operation. Losses to livestock due to drought conditions are deemed to have been avoidable and are not eligible for benefits under the 1999 LIP, Phase II.

§ 1439.202 Administration.

Where circumstances preclude compliance with § 1439.204 due to circumstances beyond the applicant's control, the county or State committee may request that relief be granted by the Deputy Administrator under this section. In such cases, except for statutory deadlines and other statutory requirements, the Deputy Administrator may, in order to more equitably accomplish the goals of this subpart, waive or modify deadlines and other program requirements if the failure to meet such deadlines or other requirements does not adversely affect operation of the program and are not prohibited by statute.

§ 1439.203 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The terms defined in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Application means the Form CCC–661, Livestock Indemnity Program Application.

Livestock means beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals

used for food or in the production of food, and buffalo and beefalo when such buffalo and beefalo are maintained on the same basis and in the same manner as beef cattle maintained for commercial slaughter.

Livestock producer means one who possesses a beneficial interest in eligible livestock as defined in this subpart, has a financial risk in the eligible livestock, and is a citizen of, or legal resident alien in, the United States. A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation owns or jointly owns eligible livestock or poultry, will be considered livestock producers. Any Native American tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); any Native American organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 will be considered livestock producers so long as they meet the terms of the definition.

§ 1439.204 Sign-up period.

A request for benefits under this subpart must be submitted to the CCC at the Farm Service Agency county FSA office serving the county where the livestock loss occurred. All applications and supporting documentation must be filed in the county FSA office prior to the close of business on:

(a) November 1, 1999, or such other date as established by CCC for 1999 LIP, Phase I, or

(b) February 18, 2000, or such other date as established by CCC for 1999 LIP, Phase II.

§ 1439.205 Proof of loss.

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the:

(1) Loss of eligible livestock occurred in an eligible county in the area of Presidential designation or Secretarial declaration;

(2) That the death of the eligible livestock was reasonably related to the recognized natural disaster; and

(3) The death of the livestock occurred:

(i) Between May 2, 1998, and May 21, 1999 inclusive for 1999 LIP, or

(ii) For 1999 LIP, Phase II, due to a disaster that was the subject of a Presidential or Secretarial disaster declaration, that was requested between May 22, 1999, and December 31, 1999, inclusive, and was subsequently approved.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee, or is requested by the county committee, in verifying the loss and quantity of eligible livestock that perished in the natural disaster. Examples of supporting documentation include, but are not limited to: purchase records, veterinarian receipts, bank loan papers, rendering truck certificates, Federal Emergency Management Agency and National Guard records, auction barn receipts, and any other documents available to confirm the presence of the livestock and subsequent losses. Certifications by third parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer must also be submitted. Third-party verifications may be accepted only if the producer certifies in writing that there is no other documentation available. Third-party verification must be signed by the party that is verifying the information. Failure to provide documentation that is satisfactory to the county committee will result in the disapproval of the application by the county committee.

(c) Livestock producers shall certify the accuracy of the information provided. All information provided is subject to verification and spot checks by the CCC. A failure to provide information requested by the county committee or by agency officials is cause for denial of any application filed under this part.

§ 1439.206 Indemnity benefits.

(a) Livestock indemnity payments for losses of eligible livestock as determined by CCC are authorized to be made to livestock producers who file an application for the specific livestock category in accordance with instructions issued by the Deputy Administrator, if the:

(1) Livestock producer submits an approved proof of loss in accordance with § 1439.205; and

(2) County or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific livestock category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the producer's inventory at the time of the disaster.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of livestock that shall be used in making a payment shall be the number of animal losses in the animal category that exceed the normal mortality threshold established by CCC.

(c) Payments shall be calculated by multiplying the national payment rate for the livestock category as determined by CCC, by the number of qualifying animals determined under (b) of this section. Adjustments, if necessary, shall apply in accordance with § 1439.207.

(d) Payments that are earned by a person under the livestock indemnity program may be assigned in accordance with the provisions of part 1404 of this chapter.

§ 1439.207 Availability of funds.

(a) In the event that the total amount of eligible claims submitted under this subpart exceeds the amount available as specified in paragraph (b) of this section, then each payment shall be reduced by a uniform national percentage.

(b) Amounts available for payments under this subpart shall be:

(1) $3 million for 1999 LIP, Phase I or

(2) The amount determined to be appropriate such that payments for LIP, Phase II and the 1999 Livestock Assistance Program provided for in this part do not exceed $200 million as specified in § 1439.108 minus other adjustments as may be appropriate.

(c) Such payment reductions shall be applied after the imposition of applicable per-person payment limitation provisions. Notwithstanding any other provision of law, the payment limits for Phase I and II shall be considered separate limits except to the extent, if any, that a producer's recovery under the 2 phases are for losses from the same disaster.

§ 1439.208 Limitations on payments.

(a) No person, as determined in accordance with part 1400 of this chapter, may receive benefits for livestock losses in excess of:

(1) $50,000 for 1999 LIP, or

(2) $40,000 for 1999 LIP, Phase II.

(b) No person may receive payments under this subpart for the same losses that the producer has received or will receive compensation under any other program provided for in this part. Payments under this part for other losses shall not, however, reduce the amount payable under this part. As provided for in § 1439.11, no person shall be eligible to receive any payment under this subpart if such person's annual gross revenue exceeds $2.5 million.

(c) Disaster benefits under this part are not subject to administrative offset under § 1403.8 of this chapter except as otherwise provided by the Deputy Administrator.

(d) No interest will be paid or accrue on disaster benefits under this part that are delayed or are otherwise not timely issued unless otherwise mandated by law.

Subpart D—Pasture Recovery Program

§ 1439.301 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. In the field, the regulations in this part will be administered by the State and county FSA committees

(''State committees'' and ''county committees'', respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, FSA, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the PRP is voluntary, program benefits will not be provided unless the participant furnishes the appropriate data.

(f) CCC may consult with other Federal agencies, State agencies, or other non-USDA sources for such assistance as is determined by CCC to be necessary to implement this part.

§ 1439.302 Definitions.

The following definitions shall be applicable to this subpart:

Applicant means, unless the context indicates otherwise, the owner or operator.

Contract Period means the period of time the PRP contract is in effect.

Federally-owned land means land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Forage crop means a perennial stand of grasses or legumes that are intended for use by livestock for grazing and are customarily used for that purpose by local producers.

Hayland means land that was or has been routinely used to produce hay.

Livestock means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals used commercially for human food or kept for the production of food or fiber.

Local FSA office means the FSA office in the local USDA service center in which the FSA records are maintained for the farm or ranch that includes the pasture land that the applicant is seeking to enroll in the PRP.

Operator means a person who is in general control of the farming operation on the farm, as determined by FSA for CCC.

Owner means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly; and a person who has life-estate in the property.

Participant means an owner or operator or tenant who has entered into a PRP contract.

Pasture land means generally enclosed land devoted to a perennial forage crop used and suitable for grazing of livestock.

Payment means, unless the context indicates otherwise, the payment specified in the PRP contract that, subject to the availability of funds, is made to a participant to compensate such participant for reestablishing an approved forage crop on eligible pasture land in the PRP.

Practice means with respect to practices to be approved for relief under this subpart, an approved measure to cost-effectively reseed pasture, and, in conjunction with seeding, as necessary, fertilize to reestablish a forage crop on eligible pasture land damaged or destroyed by drought, as determined by CCC.

Rangeland means land having indigenous, unimproved vegetation that may be used or suitable for open roaming and grazing of livestock.

State-owned land means land owned by a State Government or any department, bureau, or agency thereof, including political subdivision of a State, as determined by CCC.

State Technical Committee means that committee established pursuant to 16 U.S.C. 3861 to provide information, analysis, and recommendations to the Department of Agriculture.

Technical assistance means the assistance provided in connection with the PRP to owners or operators by FSA or other authorized designee of the Secretary in determining the eligibility of land and implementing and certifying eligible practices.

§ 1439.303 General description.

Under the PRP, the CCC will enter into contracts with eligible producers to provide payments to assist producers to reestablish the damaged or destroyed pasture land to an approved forage crop. Contracts will require the producer to maintain the new crop for three full years after the calendar year of installation.

§ 1439.304 Eligible persons.

In order to be eligible to enter into a PRP contract in accordance with this part, a person must be an owner or operator of eligible pasture land that was damaged or destroyed by drought or related conditions during calendar year 1999 and:

(a) Must normally graze livestock on such pasture land; and

(b) If an operator of eligible land that the operator does not own, must provide satisfactory evidence that such operator will be in control of such eligible pasture land for the full term of the PRP contract period.

§ 1439.305 Eligible land.

(a) Except as otherwise provided in this section, as determined by CCC or the Deputy Administrator, to be eligible for the PRP, land must be pastureland that:

(1) As determined by CCC, is located within a county that was:

(i) Approved for participation in the 1999 Livestock Assistance Program;

(ii) Had a 1999 LAP payment period of at least 120 days; and

(iii) As of March 1, 2000, was approved for assistance under the Emergency Conservation Program provided for in 7 CFR part 701 because of a 1999 drought designation, or was later approved for such participation based upon an application filed by March 1, 2000, and based upon drought damage suffered in 1999.

(2) Has been established pasture land on which livestock is normally grazed or on which the forage crop was so damaged or destroyed by drought or related conditions in calendar year 1999 that the forage crop will not return in the 2000 grazing year, and seeding is required to reestablish the forage crop, as determined by the Deputy Administrator;

(b) Notwithstanding paragraph (a) of this section, land, as determined by CCC or the Deputy Administrator, shall be ineligible for enrollment if the pasture land is:

(1) Federal-operated land;

(2) State-operated land;

(3) Hayland; or

(4) Rangeland, as determined by the Deputy Administrator.

§ 1439.306 Duration of contracts.

Contracts under this subpart and their forage crop maintenance requirements shall run through December 31, 2003; provided further that the installation of the practice must be completed no later than December 31, 2000.

§§ 1439.307–1439.319 [Reserved]

§ 1439.320 Obligations of participant.

All participants subject to a PRP contract must agree to:

(a) Carry out the terms and conditions of the PRP contract including carrying out all approved practices and meeting the schedule of dates for seeding and for maintenance measures provided for in the contract to establish and maintain the approved forage crop;

(b) Comply with all requirements of part 12 of this title;

(c) Do whatever else is necessary to establish and maintain the required forage crop according to the required practice requirements on the land subject to that contract and take such other actions that may be required by

CCC throughout the PRP contract period as needed to insure that the purposes of the contract are met;

(d) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(e) Control, subject to the contract, all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved forage crop is adequately protected, as determined by CCC;

(f) Not harvest the re-seeded cover crop at any time during the contract period; and,

(g) Be jointly and severally responsible with other persons qualifying for payments under this program on the same land for compliance with such contract and the provisions of this part and for any refunds, payment adjustments, or liquidated damages that may be required for violations of any of the terms and conditions of the PRP contract.

§ 1439.321 Obligations of the Commodity Credit Corporation.

Subject to the availability of funds, CCC shall:

(a) Upon establishment of the required forage crop, and provided all other eligibility criteria have been met, make PRP payments to participants in accordance with the provisions of this part; and

(b) Provide such technical assistance as it determines necessary to assist the participant in carrying out the PRP contract.

§ 1439.322 Eligible practices.

Eligible practices are those practices specified in the contract that meet all quantity and quality standards needed to cost-effectively:

(a) Reestablish the approved forage crop, as determined by the Deputy Administrator, on acreage subject to the contract, including reseeding;

(b) Meet environmental laws and regulations, as applicable, for the contract period; and

(c) Accomplish other purposes of the program as determined by the Deputy Administrator.

§§ 1439.323–1439.329 [Reserved]

§ 1439.330 Signup.

Only applications for contracts submitted during designated signup periods as announced by CCC will be approved.

§ 1439.331 Applications for PRP contracts.

Applicants may submit applications to participate in the PRP subject to § 1439.330 of this part. Applications may be automatically accepted upon certification by the applicant that:

(a) The land meets the eligibility requirements of § 1439.305; and

(b) The applicant meets the eligibility requirements of § 1439.304; and

(c) The applicant certifies that the pasture land to be enrolled in the PRP was damaged or destroyed by drought or related conditions in calendar year 1999 so that seeding is required to reestablish the qualifying forage crop.

§ 1439.332 PRP contract.

(a) In order to enroll land in the PRP, the participant must enter into a contract with CCC.

(b) The PRP contract will be comprised of:

(1) The terms and conditions for participation in the PRP; and

(2) Any other materials or agreements determined necessary by CCC.

(c) In order to enter into a PRP contract, the applicant must submit an application to participate at the local FSA office in the USDA service center.

(d) The PRP contract must, within the dates established by CCC, be signed by the applicant.

(e) The Deputy Administrator is authorized to approve PRP contracts on behalf of CCC.

(f) As determined by CCC, PRP contracts may be terminated before the expiration date when:

(1) The owner loses control of, or transfers, all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant(s) voluntarily request in writing to terminate the contract and obtains the approval of CCC subject to such conditions on approval as may be imposed by CCC;

(3) The participant(s) are not in compliance with the terms and conditions of the contract;

(4) The same acreage is later enrolled in another State, Federal, or local conservation program, unless the Deputy Administrator approves otherwise;

(5) The PRP practice fails after a certain time period, as determined by the Deputy Administrator, and the CCC determines the cost of restoring the cover outweighs the benefits received from the restoration; or

(6) The PRP contract was approved based on erroneous eligibility determinations.

(g) When a PRP contract is terminated, the participant must, except as agreed to by CCC, refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract. CCC, in its discretion, may permit a lesser payment to the extent that such a reduction will not impair program operations.

§ 1439.333 Contract modifications.

By mutual agreement between CCC and the participant, a PRP contract may be modified in order to:

(a) Decrease acreage in the PRP;

(b) Facilitate the practical administration of the PRP; or

(c) Accomplish the goals and objectives of the PRP, as determined by the Deputy Administrator.

§§ 1439.334–1439.339 [Reserved]

§ 1439.340 Payments.

(a) Payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications. Payments will be prorated if requests for assistance exceed available funding.

(b) Except as otherwise provided for in this part, payments may be made under the PRP only for the cost-effective establishment or installation of an eligible practice.

(c) Subject to the availability of funds, payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the PRP contract.

(d) Payment shall be made on a per-acre basis.

(e) The payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(f) The maximum amount of all payments that a person may receive under the PRP shall not exceed $2,500. The regulations set forth at part 1400 of this chapter shall be applicable in making certain eligibility and ''person'' determinations as they apply to payment limitations under this part.

(g) Payments shall be limited as needed or appropriate to account for mandatory or discretionary limits on payments.

§ 1439.341 Levels and rates for payments.

(a) As determined by the Deputy Administrator, CCC shall pay not more than 50 percent of the average cost of reestablishing the approved forage crop, including reseeding, on eligible land.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee or on such other basis as it deemed appropriate. Such cost may be the average cost in a State, a county, or a part of a county or counties, as determined by the Deputy Administrator.

(c) Notwithstanding paragraph (a) or (b) of this section, no payment shall exceed $75 per acre without approval of the Deputy Administrator. In no case shall a payment exceed $125 per acre.

§ 1439.342 Method of payment.

Payments made by CCC under this part may be made in cash, in kind, in commodity certificates, or any combination of such methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§§ 1439.343–1439.349 [Reserved]

§ 1439.350 Payments to participants.

Payments shall be made to the participants responsible for the establishment of the practice.

§ 1439.351 Violations.

(a) If a participant fails to carry out the terms and conditions of a PRP contract, CCC may terminate the PRP contract.

(b) If the PRP contract is terminated by CCC in accordance with this section then, in addition to all such other remedies as may be provided for in this subpart or elsewhere:

(1) The participant shall forfeit all rights to payments under such contract and refund all payments previously received together with interest; and

(2) Pay liquidated damages to CCC in such amount as specified in the contract.

(c) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(d) CCC may also terminate a PRP contract without sanction if the participant agrees to such termination and CCC determines such termination to be in the public interest.

(e) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1439.352 Executed PRP contract not in conformity with regulations.

If, after a PRP contract is approved by CCC, CCC discovers that the PRP contract is not in conformity with the provisions of this part, the provisions of the regulations shall prevail and the contract may be terminated.

§ 1439.353 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1439.354 Access to land under contract.

(a) The applicant or participant shall, as requested, provide all representatives or designees of CCC with access to all land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining compliance with the terms and conditions of the PRP.

§ 1439.355 Miscellaneous.

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of PRP acreage due to foreclosure, the Deputy Administrator may waive the demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in Subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition other parts of this chapter and of chapter VII relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(f) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(g) Any payment otherwise due under this subpart will be reduced to the extent that it is determined that such payment produces a duplicate benefit

under another program operated by the Department of Agriculture and that to make such duplicate payment would be contrary to the purposes of the program.

(h) In no instance, unless approved by the Deputy Administrator in accordance with law, may the amount expended under this subpart exceed an amount that, when added to the amounts expended for the 1999 LAP payments and for the Livestock Indemnity Program, Phase II, exceeds $200 million.

(i) Payments under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments except to the extent that an exemption if provided for by the Executive Vice President, CCC.

(j) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(k) In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney on an approved FSA–211 for a person or entity indicating that such power shall extend to ''all above programs'', without limitation, such power will be considered to extend to this program unless by June 22, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

Subpart E—Livestock Indemnity Program for Contract Growers

§ 1439.401 Applicability.

This subpart sets forth the terms and conditions of the Livestock Indemnity Program for Contract Growers. Under Title I of the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113; 113 Stat. 1501), the Secretary is specifically authorized to use $10 million to provide assistance to persons who raise livestock owned by other persons for income losses sustained with respect to livestock during 1999 if the Secretary finds that such losses are the result of natural disasters. Section 802 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387; 114 Stat. 1549) amended the Omnibus Consolidated Appropriations Act, 2000, to cover losses that occurred during the period January 1, 2000 through February 7, 2000. Accordingly, this subpart provides for benefits to be paid to eligible producers who sustained a loss of income directly attributed to a reduction in the production of livestock and livestock products from livestock that were entirely owned by others, due to or as a result of natural disasters that occurred from January 1 through February 7, 2000 in areas for which a Presidential or Secretarial Declaration was approved. Producers in contiguous counties that were not designated as a disaster area in their own right are not eligible for benefits under this part. Benefits will be provided with respect to eligible livestock where the death occurred in the disaster area during January 1 through February 7, 2000 where the death was reasonably related to the disaster that prompted the disaster declaration as determined by the Deputy Administrator for Farm Programs, or designee. The livestock had to be in possession of the applicant during the time in which the disaster occurred.

[65 FR 82893, Dec. 29, 2000

§ 1439.402 [Reserved]

§ 1439.403 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this Livestock Indemnity Program for Contract Growers. Definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Application means the request for benefits and the necessary documentation supporting such a request.

Contract means, with respect to contracts for the handling of livestock, an

agreement between the livestock producer or grower and the livestock owner setting forth the specific terms, conditions and obligations of the parties involved regarding the production of livestock and livestock products.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Eligible livestock means livestock that are:

(1) Beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when buffalo and beefalo are maintained on the same basis as beef cattle, and

(2) Was produced by the applicant subject to a contractual agreement between the such producer or grower and the livestock owner.

Eligible livestock producer means, with respect to particular livestock, one, other than the owner of the livestock, who possesses an independent financial interest in the eligible livestock or products derived from such eligible livestock, as defined and limited by the terms and conditions of a contractual agreement with the livestock owner; and is a citizen or a legal resident alien of the United States. Such producer may be individual or may be a farm cooperative, private domestic corporation, partnership, or joint operation in which the majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation possesses a financial interest, but not as owner, in the eligible livestock or products derived from such eligible livestock. Also such producer may also be an Indian tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); an Indian organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Self-Determination and Education Assistance Act; or an economic enterprise under the Indian Financing Act of 1974.

§ 1439.404 Application period.

(a) For losses that occurred during 1999, a request for benefits under this subpart must be submitted to CCC at the county FSA office serving the county where the loss occurred. All requests for benefits and supporting documentation must be filed in the county FSA office by May 1, 2000, or such other date as established by CCC.

(b) For losses that occurred during the period January 1, 2000 through February 7, 2000, a request for benefits under this subpart must be submitted to CCC at the county FSA office serving the county where the loss occurred. All requests for benefits and supporting documentation must be filed in the county FSA office by January 26, 2001, or such other date as established by CCC.

(c) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without such data, program benefits will not be approved or provided.

[65 FR 82893, Dec. 29, 2000]

§ 1439.405 Proof of loss.

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the loss of eligible livestock or livestock products, and the corresponding reduction of income, occurred in the area of a Presidential designation or Secretarial declaration referred to in § 1439.401 and that the death of the eligible livestock was reasonably related to the recognized natural disaster. The documentary evidence of loss, quantity of the loss, and type of eligible livestock claimed for payment, shall be reported to CCC together with any supporting documentation under paragraph (b) of this section.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee in verifying the loss and the quantity of eligible livestock that perished in the natural disaster. Examples of supporting documentation include,

but are not limited to: written contracts, production records, veterinarian receipts, bank loan papers, rendering truck receipts, Federal Emergency Management Agency and National Guard records, and any other documents available to confirm the presence of the livestock and the subsequent losses. Certification of third parties or the producer and other such documentation as the county committee determines to be necessary for the verification of the information provided by the applicant may be submitted, subject to review and approval of the county committee. Failure to provide documentation that is satisfactory to the county committee can result in disapproval of the application by the county committee.

(c) In all circumstances, livestock producers shall certify to the accuracy of the information provided. As provided by various statutes, providing a false certification to the government is punishable by imprisonment, fines and other penalties. All such remedies, as well as all civil remedies, may be applied. All information provided is subject to verification and spot check by the CCC.

§ 1439.406 Indemnity benefits.

(a) Payment under this part shall only be made to livestock producers who file a Certification of Livestock Losses for Eligible Disaster—Contract Growers, Form CCC–661B, for the specific livestock category for which relief is sought and file such form in accordance with instructions issued by the Deputy Administrator. In addition, payment may be made only if:

(1) The livestock producer submits a proof of loss that meets the requirements of § 1439.405; and

(2) The county or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the livestock producer's inventory at the time of the disaster event.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of eligible livestock that shall be used in making a payment shall be the number of animal losses in the category that exceed the normal mortality threshold established by CCC.

(c) Subject to the availability of funds, payments shall be made in an amount determined by multiplying: the national payment rate for the livestock category as determined by CCC by the amount specified in paragraph (b) of this section.

§ 1439.407 Proration of claims.

In the event that the funds made available to satisfy claims shall be less than the demand for such funds, the Deputy Administrator may reduce all claims by a uniform percentage to account for the level of available funds, or may take such other measures as he deems appropriate to apportion the funds among the claimants. Such payment reductions as are made shall be applied after the imposition of applicable payment limitation provisions.

§ 1439.408 Miscellaneous provisions.

(a) Payments under this subpart are subject to provisions contained in subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition other parts of this chapter and of chapter VII of this title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(b) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(c) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(d) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(e) The Deputy Administrator can deny or adjust claims in those instances in which the party seeking relief was affiliated with or related to the owner of the livestock if it is determined by the Deputy Administrator that such action is consistent with the purposes of this subpart and may take such action as is deemed appropriate to avoid overlap with relief available under other subparts in this part.

(f) In no instance, unless otherwise approved by the Deputy Administrator, will the amount to be expended under this program exceed $10 million.

Subpart F—2000 Flood Compensation Act

SOURCE: 65 FR 65716, Nov. 2, 2000, unless otherwise noted.

§ 1439.501 Applicability.

This subpart sets forth the terms and conditions applicable to the 2000 Flood Compensation Program (FCP). Benefits will be provided to eligible producers in the United States but only in counties approved under the 1998 FCP (provided for in regulations of this part contained in the 7 CFR, parts 1200 to 1599, edition revised as of January 1, 2000), where long-term flooding occurred, and that were subsequently approved by the Deputy Administrator for Farm Programs as eligible counties.

§ 1439.502 Administration.

This subpart shall be administered as set forth in § 1439.2, except as provided for in this subpart.

§ 1439.503 Definitions.

Except as otherwise indicated, terms in this part shall have the same meanings as those defined in 7 CFR 1439.3 and 718.2. To the extent that the definitions in this section differ from the definitions in 7 CFR 1439.3 and 718.2, the definitions in this section apply rather than the definitions in 7 CFR 1439.3 and 718.2

Application means the Form CCC–454, Flood Compensation Program Application. The CCC–454 is available at county FSA offices.

Covered land means:

(1) Land that:

(i) Was unusable for agricultural production during 2000 crop year as the result of flooding;

(ii) Was used for agricultural production during at least 1 of the 1992 through 1999 crop years;

(iii) Is a contiguous parcel of land of at least 1 acre;

(iv) Is located in a county in which producers were eligible for assistance under the 1998 Flood Compensation Program;

(v) Was not planted during FY 2000; and

(vi) Meets all other conditions of eligibility.

(2) The term ''covered land'' excludes any land with respect to which a producer is insured, enrolled, or assisted during the 2000 crop year under:

(i) A policy or plan of insurance authorized under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*);

(ii) The noninsured crop assistance program operated under section 196 of the Agricultural Market Transition Act (7 U.S.C. 7333);

(iii) Any crop disaster program established for the 2000 crop year;

(iv) The conservation reserve program established under subchapter B of chapter 1 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3831 *et seq.*);

(v) The wetlands reserve program established under subchapter C of chapter 1 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3837 *et seq.*);

(vi) Any emergency watershed protection program or Federal easement program that prohibits crop production or grazing; or

(vii) Any other Federal or State water storage program, as determined by the Secretary.

FCP means the Flood Compensation Program provided for in this part.

FY 2000 means the period from October 1, 1999 through September 30, 2000.

NASS means The National Agricultural Statistics Service.

§ 1439.504 Application process.

(a) Producers must submit a completed application prior to the close of business on December 15, 2000, or other such later date as established and announced by the Deputy Administrator. The application and any supporting documentation shall be submitted to

the FSA county office with administrative authority over a producer's eligible flooded land or to the FSA county office that maintains the farm records for the producer.

(b) Producers shall certify as to the accuracy of all the information contained in the application, and provide any other information to CCC that the FSA county office or FSA Committee deems necessary to determine the producer's eligibility.

§ 1439.505 County committee determinations of general applicability.

(a) FSA county committees shall determine whether that county was determined eligible under the 1998 FCP, and whether the land has been unusable from October 1, 1999 through September 30, 2000 due to continuing flooding. In making this determination, the FSA county committee shall use what it considers to be the best information available including but not limited to: Cooperative State Research, Education, and Extension Service; Natural Resources Conservation Service; aerial photography; rainfall data; and general knowledge of losses due to flooding.

(b) With respect to each eligible county, the FSA county committee for that county shall establish a separate payment rate for crop-land and pasture-land. These rates shall be reviewed by the FSA state committee and shall be equal to the average rental rate for the years 1996 through 2000 for all such land of each type in the county. Where these rates cannot be set in the manner provided for in paragraph (c) of this section, the FSA state committee may take into account rates established for the Conservation Reserve Program operated under 7 CFR part 1410 and ensure, subject to paragraph (c) of this section, that the rates are comparable. The Deputy Administrator shall review and may adjust the rates for reasonableness and consistency.

(c) Except as provided by the Deputy Administrator, rental rates shall be equal to the applicable county average for the kind of land involved using established NASS data in all locations where NASS has established rental rates on a county-by-county basis for 2000.

§ 1439.506 Eligible land and loss criteria.

(a) The flooded land for which a producer requests benefits must be within the physical boundary of an eligible county. Producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a producer in an eligible county must have land in a county which is eligible for payment. Such land, to be eligible for payment must meet all of the following criteria:

(1) The land is cropland or pasture land used for the production of feed for livestock (haying, grazing, or feed grain production) or other agricultural use in one or more years during the period beginning October 1, 1991, through September 30, 1999;

(2) The land is inaccessible or unable to be used for crop production, grazing, or haying because of flooding or excess moisture during all of the period beginning October 1, 1999, through September 30, 2000 unless some other period is established as the 2000-crop year for the commodity by the Deputy Administrator;

(3) The land was not used for planting during October 1, 1999, through September 30, 2000;

(4) The land has been owned, leased or under a binding cash lease by the producer continuously since October 1, 1999;

(5) The land is a contiguous parcel of land with an area equal to one acre or more;

(6) The land was not, except as determined by the Deputy Administrator, the subject of, nor will be the subject of, any other federal payment for activities or lack of activity during the period October 1, 1999, through September 30, 2000, whether or not disaster-related, with the exception of the production flexibility contract (PFC) program payments received under 7 CFR part 1412. This prohibition includes but is not limited to other payments under this part, or payments under the Conservation Reserve Program (7 CFR part 1410), the Wetlands Reserve Program (7 CFR part 1467), any Emergency Watershed Protection Program, or Federal Easement Program.

(c) On Form CCC–454 producers shall be required to certify by tract on each farm the number of flooded cropland and non-cropland acres for the farm in 2000 and the number of flooded cropland and non-cropland acres in 1992. To establish the acreage eligible for payment, flooded land certified for 1992 for each type shall be subtracted from the flooded land certified for 2000 for the applicable type. The difference will be the acreages of cropland and non-cropland subject to flooding and eligible for FCP payment, except that the difference may be adjusted as needed to ensure, to the extent practicable, an accurate estimate of the net increased flooding on the farm after October 1, 1993.

(d) All determinations as to the amount of land eligible for enrollment and compensation under this subpart are subject to approval by the county committee.

(e) The FSA county committee may use any available documentation to make the determinations under paragraphs (b) and (c) of this section, including but not limited to: maps, acreage reports, slides, precipitation data, water table levels and disaster reports.

§ 1439.507 Producer eligibility.

(a) Payments under this subpart shall be subject to the provisions of § 1439.1 through § 1439.12, except as otherwise provided in this subpart.

(b) No person (as defined and determined under 7 CFR part 1400) may receive more than $40,000 under this subpart.

(c) No person (as defined and determined under 7 CFR part 1400) will be eligible for payment under this subpart if that person's annual gross receipts for calendar year 1999 were in excess of $2.5 million. That determination shall be made in the manner provided for in § 1439.11.

(d) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of 7 CFR 1400.501 and 1400.502.

§ 1439.508 Calculation of assistance.

(a) The unadjusted value of FCP assistance determined with respect to the flooded land in an eligible county for each producer shall not exceed the amount obtained by adding the amounts in paragraphs (b) and (c) of this section.

(b) For each eligible producer with respect to the applicable qualifying cropland which is determined, consistent with this subpart, to be eligible land for the payment purposes, the established local payment rate for cropland will be multiplied by the number of acres determined to be qualifying acres, as determined by the County Committee in accordance with instructions of the Deputy Administrator.

(c) For each eligible producer with respect to the applicable qualifying non-cropland acres consistent with this subpart, as determined by the county committee in accordance with instructions of the Deputy Administrator, the acres will be multiplied by the established payment rate for non-cropland acres.

(d) Payments will be adjusted as determined necessary to comply with other provisions of this subpart such as those set in § 1439.509.

§ 1439.509 Availability of funds.

In the event that the total amount of claims submitted under this subpart exceeds the $24 million authorized for FCP by Public Law 106–224, each payment to a producer shall be reduced by a uniform national percentage. Such payment reductions shall be after the imposition of applicable payment limitation provisions.

Subparts G–H [Reserved]

Subpart I—American Indian Livestock Feed Program

§ 1439.900 [Reserved]

§ 1439.901 Applicability.

This subpart sets forth the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). The AILFP has been allocated a budget of $12.5 million. Assistance will be

available in those regions that CCC determines have been affected by natural disaster, and where a determination is made by the Deputy Administrator for Farm Programs that a livestock feed emergency exists on tribal land. Funds made available under the AILFP shall be available beginning in crop year 1997 and in subsequent crop years. Payments may become available as contracts with tribal governments are approved. If any other benefits are received from the Department of Agriculture for the same loss, then payments under this part will be reduced accordingly. Payments will terminate when funds have been exhausted, without respect to the date of any application, or of when any contract has been entered into by any tribal government and CCC. Applicants will receive benefits on a first-come, first-served basis.

§ 1439.902 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Deputy Administrator for Farm Programs, Farm Service Agency (FSA). This program shall be carried out in the field as prescribed in these regulations and as directed in the contract executed between the applicable tribal government and CCC, except that in the event any contract provision conflicts with these regulations, the regulations shall apply.

(b) Tribal governments, their representatives, and employees do not have authority to modify or waive any provisions of the regulations of this subpart.

(c) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any provisions of regulations of this subpart.

(d) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, and other program requirements in cases where the applicant or tribe, as applicable, show that circumstances beyond the applicant's or tribe's control precluded compliance with the deadline and where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(e) The tribal government will, in accordance with this part and in coordination with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) and FSA State and county committees, recommend the geographical size and shape of the region where the natural disaster has occurred, and whether the regional eligibility requirement has been satisfied. Documentation to support the reported natural disaster shall be provided by the State FSA office and shall accompany the recommendation. The recommendation of eligibility must be acted on by the Deputy Administrator.

(f) The Deputy Administrator will determine all prices with respect to implementing the AILFP.

(g) The FSA State committee will determine crop yields and livestock carrying capacity with respect to implementing the AILFP.

(h) Participation in the AILFP by a tribal government for either the tribal government's benefits or for the benefit of any eligible owner is voluntary and is with the understanding that CCC will not reimburse the tribal government or its members for any administrative costs associated with the administration or implementation of the program.

(i) The provisions of subpart A shall not apply to this part; however the following provisions of 7 CFR part 1439, as in effect on January 1, 1999 (see 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) shall apply in the conduct of this program: §§ 1439.3, 1439.11 through 1439.22, 1439.24 as well as §§ 1439.6(i)(1)(i), 1439.8(a), and 1439.9(d) through (f). Further, from those same regulations, the provisions of §§ 1439.10(a) and 1439.15, as in effect on January 1, 1999 (see 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) shall apply as set forth in §§ 1439.908 and 1439.909.

§ 1439.903 Definitions.

The definitions set forth in this section shall be applicable to the program authorized by this subpart. The terms defined in § 1439.3 shall also be applicable except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Animal Unit (AU) means a standard expression of livestock based on a net energy maintenance requirement equal to 13.6 megacalories per day.

Animal Unit Day (AUD) means an expression of expected or actual stocking rate equal to one day.

Approving official means a representative of the tribal government who is authorized to approve an application for assistance made in accordance with this subpart.

Carrying capacity means the stocking rate expressed as acres per animal unit that is consistent with maintaining or improving vegetation or related resources.

Dependent Indian Community means a limited category of Indian lands that are neither reservations nor allotments and is:

(1) Land set aside by the Federal Government for the use of Indians as Indian land, and

(2) Under Federal superintendence.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or designee.

Disaster period means the length of time that damaging weather, adverse natural occurrence, or related condition has a detrimental affect on the production of livestock feed.

Eligible feed for assistance means any type of feed (feed grain, oilseed meal, premix, or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that provides net energy megacalories and that is consistent with acceptable feeding practices and was not produced by the owner.

Eligible livestock means beef and dairy cattle; buffalo and beefalo maintained on the same basis as beef cattle; equine animals used for food or used directly in the production of food; sheep; goats; and swine.

Eligible owner means an individual or entity, including the tribe, eligible to participate in this program, who:

(1) Contributes to the production of eligible livestock or their products;

(2) Has such contributions at risk;

(3) Meets the criteria set forth in § 1439.907; and

(4) Meets eligibility criteria set forth by the tribal government in an approved contract.

Livestock feed emergency means a situation in which a natural disaster causes more than a 35-percent reduction in the feed produced in a region determined in accordance with § 1439.904 for a defined period, as determined by CCC. Any loss of feed production attributable to overgrazing or other factors not considered to be a natural disaster as specified in this subpart shall not be included in the loss used to determine if a livestock feed emergency occurred.

Natural disaster means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or an adverse natural occurrence such as earthquake, flood, or volcanic eruption; or a related condition, including but not limited to heat, or insect infestation, that occurs as a result of aforementioned damaging weather or adverse natural occurrence prior to or during the crop year that directly causes, accelerates, or exacerbates the reduction of livestock feed production.

Net energy maintenance means the appropriate amount of net energy needed to meet the daily maintenance needs for livestock based on the weight range by type of eligible livestock as provided in this section, as determined by CCC.

Region means a geographic area suffering a livestock feed emergency because of natural disaster as determined by a tribal government in accordance with § 1439.904.

Tribal Governed Land means:

(1) All land within the limits of any Indian reservation;

(2) Dependent Indian communities;

(3) Any lands title to which is either held in trust by the United States for the benefit of an Indian tribe or Indian, or held by an Indian tribe or Indian subject to a restriction by the United States on alienation; and

(4) Land held by an Alaska Native, Alaska Native Village or village or regional corporation under the provisions of the Alaska Native Claim Settlement Act or other Act relating to Alaska Natives.

Tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of

the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Type and weight range means the weight range by type of livestock and appropriate amount of energy required to provide the daily maintenance needs for livestock, as follows:

Kind/type	Weight range (lbs.)	Daily energy requirement
(1) Beef cattle (Buffalo/Beefalo):		
Beef	Less than 400	3.01 NEm Mcal.
Beef	400–799	5.59 NEm Mcal.
Beef	800–1099	7.31 NEm Mcal.
Beef	1100+	10.75 NEm Mcal.
Beef, cow	All	13.60 NEm Mcal.
Beef, bull	1000+	11.18 NEm Mcal.
(2) Dairy cattle:		
Dairy	Less than 400	3.01 NEm Mcal.
Dairy	400–799	5.59 NEm Mcal.
Dairy	800–1099	7.31 NEm Mcal.
Dairy	1100+	10.75 NEm Mcal.
Dairy, cow	Less than 1100	23.22 NEl Mcal.
Dairy, cow	11–1299	26.66 NEl Mcal.
Dairy, cow	1300–1499	28.38 NEl Mcal.
Dairy, cow	1500+	29.67 NEl Mcal
Dairy, bull	1000+	12.47 NEm Mcal.
(3) Equine:		
Equine	Less than 450	6.2 DE Mcal.
Equine	450–649	8.9 DE Mcal.
Equine	650–874	11.6 DE Mcal.
Equine	875+	17.3 DE Mcal.
(4) Swine:		
Swine	Less than 45	780 DE Kcal.
Swine	45–124	1630 DE Kcal.
Swine	125+	2867 DE Kcal.
Swine, sow	235+	9854 DE Kcal.
Swine, boar	235+	5446 DE Kcal.
(5) Sheep:		
Sheep	Less than 44	0.34 NEm Mcal.
Sheep	44–82	0.77 NEm Mcal.
Sheep	83+	0.95 NEm Mcal.
Sheep, ewe	150+	2.66 NEm Mcal.
Sheep, ram	150+	1.46 NEm Mcal.
(6) Goats:		
Goats	Less than 44	0.43 NEm Mcal.
Goats	44–82	0.95 NEm Mcal.
Goats	83+	1.29 NEm Mcal.
Goats, doe	125+	3.00 NEm Mcal.
Goats, doe, dairy 1994 and subsequent crop years.	125+	4.47 NEm Mcal.
Goats, buck	125+	1.80 NEm Mcal.

§ 1439.904 Region.

(a) The size of a region will consist of:

(1) An entire reservation, even if the reservation is less than 320,000 acres; or

(2) Contiguous acreage of at least 320,000 acres and include land acreage of an Indian reservation or tribal governed land. If a region is delineated based on minimum size of 320,000 acres, the region shall be delineated without regard to the boundary of a reservation or tribal governed land. If the acreage affected by the natural disaster does not meet the minimum acreage requirement specified in this paragraph (a)(2), acreage will be added from surrounding land until the minimum requirement is met.

(b) The region must:

(1) Include acreage affected by the natural disaster that is the basis for the region's designation;

(2) Correspond to the shape of the natural disaster to the maximum extent possible;

(3) Be defined in a manner that does not intentionally include or exclude owners or crops;

(4) Contain some acreage of tribal governed land; and

(5) Have suffered a livestock feed emergency as defined in § 1439.903.

§ 1439.905 Responsibilities.

(a) During the operation of this program, CCC shall:

(1) Provide weather data, crop yields and carrying capacities to tribes requesting such information;

(2) Review contracts submitted by tribal governments requesting disaster regions; and

(3) Act as an agent for disbursing payments to eligible livestock owners in approved disaster regions.

(b) Tribal governments shall be responsible for:

(1) Approaching CCC to obtain a contract to participate in the AILFP based on the tribe's voluntary decisions that participation will benefit its members;

(2) Gathering, organizing, and reporting accurate information regarding disaster conditions and region;

(3) Advising livestock owners in an approved region that they may be eligible for payments, in addition to the method and requirements for filing applications;

(4) Accepting applications for payment from individual livestock owners;

(5) Determining that the information provided by individual livestock owners on payment applications is accurate and complete and that the owner is eligible for payments under this program;

(6) Submitting only accurate and complete payment applications to the designated FSA office acting as an agent for disbursing payments to eligible livestock owners.

(c) The owner or authorized representative, shall:

(1) Furnish all the information specified on the payment application, as requested by CCC;

(2) Provide any other information that the tribal government deems necessary to determine the owner's eligibility; and

(3) Certify that purchased feed was or will be fed to the owner's eligible livestock.

§ 1439.906 Program availability.

(a) When a tribal government determines that a livestock feed emergency exists due to a natural disaster, the tribal government may submit a properly completed contract requesting approval of a region. All contracts requesting region approval must be submitted by the later of December 28, 1998, or 30 days after the end of the disaster period specified on the contract.

(b) Properly completed contracts shall consist of:

(1) A completed form CCC–453, Contract To Participate; and

(2) A completed form CCC–648, Region Designation And Feed Loss Assessment; and

(3) Supportive documentation as determined by CCC including, but not limited to:

(i) A map of the region delineated in accordance with § 1439.904;

(ii) Historical production data and estimated or actual production data for the disaster year;

(iii) Climatological data provided by the State FSA office; and

(iv) A report of an on-site survey.

(c) The Deputy Administrator shall make a determination as to whether a livestock feed emergency exists not later than 30 days after receipt of a properly completed contract made in accordance with this subpart and shall notify the tribal government and State FSA office of such determination as applicable.

(d) The feeding period provided in the approved contract will be for a term not to exceed 90 days, except as provided in paragraph (e) of this section. The feeding period shall not be extended if the livestock feed emergency no longer exists. Notwithstanding the duration of any feeding period, assistance under this subpart terminates immediately and without notice when program funds are exhausted as specified in § 1439.901.

(e) The tribal government may request to extend the feeding period not to exceed an additional 90 days for each extension if disaster conditions have not diminished significantly and a livestock feed emergency continues.

§ 1439.907 Eligibility.

(a) An eligible owner must own or jointly own the eligible livestock for which payments under this subpart are requested. Notwithstanding any other provision of this subpart, livestock leased under a contractual agreement that has been in effect at least 6 months prior to the date of application for assistance made under this subpart shall be considered as being owned by the lessee if the lease:

(1) Requires the lessee to furnish the feed for such livestock; and

(2) Provides for an interest in such livestock, such as the right to market a share of the increase in weight of livestock.

(b) A State or non-tribal local government or subdivision thereof, or any individual or entity determined to be ineligible in accordance with § 1400.501 of this chapter are not eligible for benefits under this subpart.

(c) Any eligible owner of livestock, including the tribe, may file a CCC-approved AILFP payment application with the tribal government. When such a payment application is filed, the owner and an authorized tribal government representative shall execute the certification contained on such payment application no later than the deadline established by CCC upon approval of the region.

(d) To be eligible for benefits under this subpart, livestock owners must own or lease tribal governed land in the delineated region; and have had livestock on such land at the time of disaster that is the basis for the region's designation.

(e) Eligible livestock owners shall be responsible for providing information to the tribal government that accurately reflects livestock feed purchases for eligible livestock during the feeding period. False or inaccurate information may affect the owner's eligibility.

§ 1439.908 Payment application.

(a) Except as provided in paragraph (d) of this section, payment applications from interested eligible owners must be:

(1) Submitted to the tribal government by the owner no later than a date announced by the tribe, such date being no later than the applicable date in § 1439.907(c); and

(2) Submitted by the tribal government to the office designated by CCC no later than a date announced by CCC; and

(3) Accompanied by valid receipts substantiating purchase of eligible feed for assistance. Valid receipts must also be accompanied by the certification referenced in § 1439.907(d)(3) and shall contain:

(i) The date of feed purchase, which must fall within the eligible feeding period as approved on the contract;

(ii) The names and addresses of the buyer and the vendor;

(iii) The type of feed purchased;

(iv) The quantity of the feed purchased;

(v) The cost of the feed; and

(vi) The vendor's signature if the vendor is not licensed to conduct this type of business transaction.

(b) The tribal government shall review each payment application, as specified by CCC, for completeness and accuracy. Except as provided in paragraphs (c) and/or (d) of this section, the tribal government shall approve those eligible owners and applications meeting the requirements of this subpart.

(c) No approving tribal government member shall review and approve a payment application for any operation for which such member has a direct or indirect interest. Such payment application may be reviewed for approval by a member of the tribal government who is not related to the applicant by blood or marriage.

(d) Tribal governments do not have the authority to approve a payment application for any operation for which the tribe has a direct or indirect interest. Payment applications for tribal owned livestock shall contain an original signature of a member of the tribal government, signing as representing all owners of the tribal owned livestock, who possesses the authority to sign documents on behalf of the tribe and shall be submitted to an office designated by the Secretary for approval.

(e) No payment application, as specified by CCC, shall be approved unless the owner meets all eligibility requirements. Information submitted by the owner and any other information, including knowledge of the tribal government concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If either the payment application is incomplete or information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operation in order to make a determination as to the owner's eligibility, the owner's payment application, as specified by CCC, shall be denied. The tribal government shall be responsible for notifying the owner of the reason for the denial and shall provide the owner an opportunity to submit additional information as requested.

(f) All payment applications, as specified by CCC, approved by the tribal government will be submitted to a designated FSA office for calculation of payment.

§ 1439.909 Payments.

(a) Provided all other eligibility requirements of this subpart are met and funds are available, all eligible payment applications submitted to the designated FSA office shall have payments issued to the applicant by CCC.

(b) If any term, condition, or requirement of these regulations or contract are not met, payments and benefits previously provided by CCC that were not earned under the provisions of the application shall be refunded.

(c) Each owner's share of the total payment shall be indicated on the application, and each owner shall receive

benefits or final payment from CCC according to benefits or payments earned under the provisions of the application.

(d) CCC may reduce the benefits payable to an applicant under this program if CCC has made assistance available to such applicant under any other CCC program with respect to the same natural disaster.

(e) The amount of assistance provided to any owner shall not exceed the smaller of either:

(1) The dollar amount of eligible livestock feed purchased, as documented by acceptable purchase receipts, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period; or

(2) 30 percent of the amount computed by multiplying:

(i) The number of animal units determined on the basis of the number of eligible livestock of each type and weight range; by

(ii) The smaller of the number of days the owners provided feed to eligible livestock or the total days in the contract's feeding period; by

(iii) The Animal Unit Day value, as established by the Deputy Administrator for Farm Programs, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period.

(f) Payments issued in conjunction with this program will not be subject to offset for debts incurred through participation in any other program conducted by the Department of Agriculture.

§ 1439.910 Program suspension and termination.

(a) The tribal government that requested the AILFP assistance, may at any time during the operation of a program recommend suspension or termination of the program.

(b) The Deputy Administrator may suspend or terminate the program at any time if:

(1) The tribal government requests termination or suspension; or

(2) Funding is exhausted.

§ 1439.911 Appeals.

Any person who is dissatisfied with a CCC determination made with respect to this subpart may make a request for reconsideration or appeal of such determination in accordance with part 780 of this chapter. Any person who is dissatisfied with a determination made by the tribal authority should seek reconsideration of such determination with the tribe. Decisions and determinations made under this subpart not rendered by CCC or FSA are not appealable to the National Appeals Division.

§§ 1439.912–1439.915 [Reserved]

PART 1446—PEANUTS

Subpart A—General Provisions

Sec.
1446.101 General statement.
1446.102 Administration.
1446.103 Definitions.
1446.104 Performance based upon action or advice of a representative of the Secretary.
1446.105 Handling payments and collections not exceeding $9.99.

Subpart B—Basic Handler Operations

1446.201 General handler provisions.
1446.202 Peanut buyer card and buying point card.
1446.203 Marketing card entries and collection of assessments, penalties and debts.
1446.204 Transmittal of collections of penalties and claims.

Subpart C—Warehouse Storage Loans

1446.301 Eligibility of peanuts for price support at the quota loan rate.
1446.302 Eligibility of peanuts for price support at the additional loan rate.
1446.303 Delivery of peanuts for price support advance.
1446.304 Price support loans involving estates, trusts or minors.
1446.305 Additional peanuts ineligible for price support.
1446.306 Commingling of peanuts.
1446.307 Disaster transfer of Segregation 2 or Segregation 3 peanuts from additional loan to quota loan.
1446.308 Loan pools.
1446.309 Immediate buyback and sale of loan peanuts to the storing handler.
1446.310 Additional peanut support levels.
1446.311 Minimum CCC sales price for certain peanuts.

Subpart D—Handling Contract Additional Peanuts—General Provisions

1446.401 Contracts for additional peanuts for crushing or export.

1446.402 Approval as handler of contract additional peanuts.
1446.403 Letter of credit.
1446.404 Transfer of contracts prior to delivery.
1446.405 Inspection of contract additional peanuts.
1446.406 Commingled storage of contract additional peanuts.
1446.407 Handler transfer of contract additional peanuts or transfer of disposition credit.
1446.408 Decreasing or drawing upon a letter of credit.
1446.409 Access to facilities.
1446.410 Disposition date.
1446.411 Export provisions.
1446.412 Evidence of export.
1446.413 Disposal of meal contaminated by aflatoxin.
1446.414 Processing additional peanuts into products.
1446.415 Prohibition on importation or reentry of contract additional peanuts.
1446.416 Suspension of restrictions on imported peanuts.
1446.417 Loss of peanuts.

Subpart E—Handling Contract Additional Peanuts—Physical Supervision

1446.501 Accounting for contract additional peanuts acquired under physical supervision.
1446.502 Physical supervision of contract additional peanuts.
1446.503 Disposition requirements under physical supervision.
1446.504 Substitution of quota and additional peanuts.

Subpart F—Handling Contract Additional Peanuts—Nonphysical Supervision

1446.601 Disposition requirements under nonphysical supervision.
1446.602 Disposition credit for peanuts under nonphysical supervision.
1446.603 Disposition credit for peanuts in exported products made from quota peanuts.

Subpart G—Penalties and Liquidated Damages

1446.701 Excess marketing of quota peanuts.
1446.702 Peanuts ineligible for quota loan.
1446.703 Assessment of penalties against handlers.
1446.704 Reductions of penalties.
1446.705 Appeals.
1446.706 Statutory liens against peanuts.
1446.707 Schemes and devices.

Subpart H—Recordkeeping, Reporting and Paperwork Reduction

1446.801 Recordkeeping and reporting requirements.
1446.802 Examination of records and reports.
1446.803 Retention of records.
1446.804 Information confidential.
1446.805 Penalty for failure to keep records and make reports.
1446.806 Fraud by handler.
1446.807 Paperwork Reduction Act assigned numbers.

AUTHORITY: 7 U.S.C. 7271; 15 U.S.C. 714b and 714c.

SOURCE: 56 FR 16230, Apr. 19, 1991, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1446 appear at 65 FR 8247, Feb. 18, 2000.

Subpart A—General Provisions

§ 1446.101 General statement.

This part sets out provisions relating to the 1996 through 2002 crops of peanuts as authorized and in accordance with the applicable provisions of Public Law 104–127. The peanut marketing, storage, handling and disposition requirements for peanuts for the 1991 through 1995 crops shall continue to be governed by the regulations codified in this part 1446 as of January 1, 1996. Program announcements will be issued to specify national average support rates, and other provisions that may be required in order to implement these regulations.

[56 FR 16230, Apr. 19, 1991, as amended at 61 FR 37623, July 18, 1996]

§ 1446.102 Administration.

(a) *Responsibility*. The Tobacco and Peanuts Division (TPD), Farm Service Agency (FSA), will administer this part under the general direction and supervision of the Administrator, FSA, or the Executive Vice President, Commodity Credit Corporation (CCC), as applicable. In the field, these regulations shall be carried out by State and county Farm Service Agency (FSA) committees and marketing associations that have contracted with CCC for such purposes.

(b) *Limitation of authority*. A State or county committee or its employees or

representatives, or any marketing association or its employees or representatives, may not modify or waive any of the provisions of this part or any amendment or supplement thereto.

(c) *Supervisory authority*. Delegation of authority contained in this part shall not preclude the Administrator, FSA, the Executive Vice President, CCC, or a designee of such person from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation.

§ 1446.103 Definitions.

For purposes of this part, the definitions and provisions of parts 718, 719, 729, 780, 790, 791, 793, 1400, 1402, 1403, 1407, 1421, and 1422 of this title are incorporated and shall apply except where the context or subject matter or provisions of the regulations in this part otherwise requires or provides. References contained in this subpart to other parts of this chapter or title include any subsequent amendments to those referenced parts. Unless the context indicates otherwise, any reference to the Executive Vice President of CCC shall also be read to mean to any persons designated by the Executive Vice President. Unless the context or subject matter otherwise requires, the following words and phrases as used in this part and in all related instructions and documents shall have the following meanings:

Additional loan rate. The price support loan rate that is applicable to a lot of additional peanuts.

Additional peanuts. Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

Adequate assets. Assets less liabilities determined by the marketing association, acting pursuant to instructions of CCC, to be sufficient to assure the export or crushing of contract additional peanuts in compliance with the provisions of this part. Assets may include, but are not limited to, accounts receivable, value of inventory, equipment, plant, property, and investments. Liabilities may include accounts payable, mortgages, loans, letters of credit and other obligations.

Adequate facilities. Weighing, grading, shelling and/or milling equipment, storage facilities, and other physical plant and equipment owned, leased or subleased by a handler, as determined by the marketing association to be sufficient to receive, store, process, and ship all the contract additional peanuts to be handled in, by, through, or in connection with such facilities into the export or domestic market.

All other (AO) kernels. The peanut kernels remaining in the total kernel content of a lot of peanuts after excluding sound mature kernels and sound split kernels. AO kernels consists of damaged kernels, other kernels, and loose shelled kernels, as identified and determined by the Federal-State Inspection Service.

FSA. The Farm Service Agency of the United States Department of Agriculture.

Bright hull Valencia peanuts. Valencia type peanut produced in the Southwest for which not more than 25 percent of the shells are damaged by:

(1) Discoloration;

(2) Cracks or broken ends; or

(3) Both discoloration and cracks or broken ends.

Buyback. A term used to describe a marketing transaction in which a producer places additional peanuts under loan at the additional loan rate and a handler simultaneously purchases such peanuts from the marketing association for seed or other domestic edible uses.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the United States Department of Agriculture.

Commercial quantity. For purposes of determining penalties that may be due if additional peanuts that were exported are subsequently reentered into the United States, commercial quantity means any quantity of such peanuts that were reentered by any person during any marketing year if the total quantity reentered by such person or a related person exceeds 200 pounds of farmers stock peanuts or 150 pounds of shelled peanuts.

Concealed rancidity, mold or decay (RMD). Peanut kernels affected by rancidity, mold or decay which is not apparent by external examination.

Contract additional peanuts. Additional peanuts for crushing or exportation, or both, for which a contract has been entered into between a handler and producer in accordance with this part.

Crushing. The processing of peanuts to extract oil for food uses and meal for uses as allowed by the provisions of this part or the processing of peanuts by crushing or otherwise when authorized by the Secretary.

Current marketing year. The marketing year that begins on August 1 during the calendar year in which the applicable crop of peanuts was planted.

DAFP. The Deputy Administrator for Farm Programs, FSA.

Damaged kernels (DK). Defective whole kernels which ride the screen officially designated for the peanut type, and the defective splits found in farmers stock which, as determined upon an official inspection by an inspector:

(1) Are rancid, decayed or moldy;

(2) Have sprouts more than ⅛ inch long;

(3) Are affected by insects, worm cuts, web or frass;

(4) Are dirty, with appearance materially affected;

(5) Are affected by flesh discoloration or skin discolorations affecting more than 25% of the surface; or

(6) Are affected by freezing, or have any characteristic of freeze damage.

Dark hull Valencia peanuts. Valencia type peanuts that are produced in the Southwest and that do not meet the requirements for bright hull Valencia peanuts.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture.

Dollar value. An amount determined as follows:

(1) For inspected peanuts, the total of the amounts determined from each applicable form FSA–1007, Inspection Certificate and Sales Memorandum, by multiplying the applicable quantity by the quota loan rate that would apply to peanuts of the type and quality recorded on such form FSA–1007 without regard to whether such peanuts were found to contain visible Aspergillus flavus mold.

(2) For noninspected peanuts, the amount determined by multiplying the quantity involved by the national average price support rate for quota peanuts.

Domestic edible use. Domestic edible use means:

(1) Use of peanuts for milling to produce domestic food peanuts (including the processing of peanuts into flakes);

(2) Use of peanuts for seed, excluding unique strains which meet both of the following requirements:

(i) They are not commercially available, and

(ii) They are used exclusively for the production of green peanuts; and

(3) Use of peanuts on a farm.

Edible export standard for contract additional peanuts. The standards for raw shelled or in-shell peanuts of any crop exported for human consumption constituting U.S. Standards grade requirements, or modifications thereof, and requirements as to wholesomeness, as are specified in the outgoing quality regulations for such crop as set forth in the Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts (the Peanut Marketing Agreement No. 146), except that peanuts shown by the applicable form FV–184–9, Federal-State Inspection Certificate (Peanuts), to deviate from these requirements shall be considered as meeting such requirements if the handler certifies to the marketing association that such deviations are:

(1) Acceptable to the export buyer; and

(2) Fall within the range of deviations allowable under the Peanut Marketing Agreement No. 146.

Eligible country. With respect to credit for exportation of additional peanuts, any destination outside the United States for which an export license may be acquired, except that with respect to the 1991 crop, neither Canada nor Mexico shall be considered an eligible country for the purpose of exporting peanut products other than treated seed peanuts.

Eligible peanuts. Eligible peanuts are farmers stock peanuts that:

(1) Were produced in the United States by an eligible producer;

(2) Were planted during the year in which the current marketing year begins;

(3) Are free and clear of any liens and encumbrances, except a statutory lien that has resulted from failure to pay a peanut poundage quota penalty, unless acceptable waivers are obtained;

(4) Unless otherwise approved by the Executive Vice President, CCC, were produced in the area served by the marketing association through which the price support loan is being requested;

(5) Were not produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession;

(6) Have been inspected and have an official grade determined by a Federal or Federal-State inspector; and

(7) Must, if delivered to the association in bags in the Southwestern area, be in new or thoroughly cleaned used bags which:

(i) Are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers;

(ii) Are free from holes;

(iii) Are finished at the top with either the selvage edge of the material, a binding, or a hem; and

(iv) Are uniform in size with approximately a 2 bushel capacity.

Eligible producer. An eligible producer for purposes of price support under this part shall be a person who meets all of the following:

(1) As a landowner, landlord, tenant, or sharecropper, the person produced the peanuts that are being pledged as collateral for a price support loan or is a bona fide successor to such person.

(2) The person has beneficial interest in the peanuts that are being pledged as collateral for a price support loan and had such beneficial interest before such peanuts were harvested.

(3) The person is in compliance with the provisions of:

(i) Part 12 of this title relating to persons producing agriculture commodities on wetlands or highly erodible land.

(ii) Part 796 of this title relating to growing a controlled substance.

(iii) Part 1400 of this title relating to the eligibility of foreign persons for loans or benefits.

(iv) Part 400 of this title relating to crop insurance requirements.

(4) The person has not marketed 100 percent of a quota peanut crop that meets the quality requirements for domestic edible use, through a marketing association for the 2 marketing years immediately preceding the current marketing year, if handlers have provided the producer with written offers, upon delivery, for the purchase of all the quota peanuts, at a price equal to or in excess of the quota support price. If a producer is rendered ineligible for quota price support under this or any other provision, the producer may appeal the ineligibility determination utilizing procedures provided in part 780 of this title.

(5) That is not ineligible for a price support loan under any other provision of law or regulation.

Export and exportation. A shipment of peanuts or peanut products from the United States that is directed to a country outside the United States for which a statement, which is signed by the handler and specifies the name and address of the consignee, is made available to the marketing association or CCC, or, upon request by the marketing association or CCC, for which a consignee receipt is made available to the marketing association or CCC.

Farmers stock peanuts. Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, LSK's, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any LSK's that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

Foreign material (FM). Anything other than peanuts, which is found in farmers stock peanuts.

Fragmented peanuts. Peanuts meeting the qualifications for fragmented peanuts as defined in the outgoing quality regulations of the Peanut Marketing Agreement (No. 146) applicable to the crop year in which the peanuts were produced.

Handler. Any person that acquires peanuts for resale, domestic consumption, processing, exportation, or crushing through a business involved in buying and selling peanuts or peanut products.

In-shell peanuts. Cleaned peanuts in the shell which are mature, dry and free from:

(1) LSK's,

(2) Dirt or other foreign material,

(3) Pops,

(4) Paper ends, and

(5) Damage caused by cracked or broken shells.

Inspector. A Federal or Federal-State inspector authorized or licensed by the Administrator, Agricultural Marketing Service, United States Department of Agriculture (USDA), to grade peanuts.

Liquidated damages. An amount due, but not as a penalty, as an amount estimated to be the probable damage to the peanut price support program when a producer or handler has taken an action that is contrary to the regulations in this part and a determination is made in accordance with such regulations that such action may damage the administration or efficiency of the price support program.

Loan rate. The applicable national average support rate announced by the Secretary for quota or additional peanuts for the current year, as adjusted for differences in grade, type, quality, location and other factors.

Loan value. For eligible farmers stock peanuts, the amount determined by multiplying the applicable loan rate, as determined for the applicable marketing category, by the net weight of such peanuts that are pledged as collateral for a price support loan.

Loose shelled kernel (LSK). Peanut kernels or portions of kernels determined by official inspection to be free of their hulls and scattered in farmers stock peanuts.

Lot—(1) *Farmers stock peanuts*. That quantity of farmers stock peanuts for which one form FSA–1007 or other inspection certificate is issued. For farmers stock peanuts delivered to the marketing association for a price support loan advance, a lot shall consist of the contents of one vehicle, except that a lot may consist of the contents of two or more vehicles if the contents of such vehicles do not exceed a total of approximately 24,000 pounds of peanuts.

(2) *Milled peanuts*. That quantity of milled or shelled peanuts for which one form FV–184–9 or substitute approved for general use by the Executive Vice President, CCC, is issued. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds.

Marketing association. An area marketing association selected and approved by the Secretary which is operated primarily for the purpose of conducting loan activities as provided for in this part. The approved area marketing associations and the areas served by such associations are as follows:

(1) *GFA Peanut Association of Camilla, Georgia (GFA)*. GFA serves the Southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the States of Alabama, Florida, Georgia, Mississippi and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(2) *Peanut Growers' Cooperative Marketing Association of Franklin, Virginia (PGCMA)*. PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(3) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA)*. SWPGA serves the Southwestern area consisting of the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming, and all other territories of the United States not listed in paragraphs (1) or (2).

Marketing card. Form FSA–1002, Peanut Marketing Card, that has been issued in accordance with part 729 of this title for use, at the time of each initial marketing of peanuts from a farm, to identify the farm on which

such peanuts were produced and to provide other pertinent information that may be required when such peanuts are marketed.

Marketing penalties—(1) *Producer*. For producers, the penalties prescribed in part 729 of this title.

(2) *Handler*. For handlers, the penalties which are prescribed, computed, assessed and collected in accordance with this part and are effective for the applicable crop.

Marketing year. The 12-month period beginning on August 1 of a year in which the peanuts are planted and ending on July 31 of the following year.

Net weight. Unless otherwise specified in this part, the gross weight of a lot of farmers stock peanuts, as recorded on the form FSA–1007, less:

(1) The weight of any foreign material in such lot; and

(2) The amount determined by subtracting 7 percentage points from any percentage of moisture in excess of 7 percent and multiplying the result by the gross weight of such lot excluding foreign material.

Nonphysical supervision. Supervision of the disposition of additional peanuts whereby representatives of the marketing association or other representatives of the Secretary can determine, in accordance with this part, whether additional peanuts purchased for crushing or export have been disposed of in accordance with the provisions of this part without the ''physical'' presence of such representatives to verify the actual handling and disposition of such peanuts. Such supervision shall be conducted in accordance with this part and shall consist of the review and analysis of records which handlers are required to make available to representatives of the Secretary for the verification of proper disposition of additional peanuts under this supervision option.

Other kernels (OK). The kernels in farmers stock peanuts which pass through screens to separate them from the sound mature kernels, but excluding sound split kernels, damaged kernels, and broken pieces less than ¼ of a whole kernel.

Participating warehouse. A storage facility whose owner or operator has entered into a peanut receiving and warehouse contract agreeing to the provisions of such contracts for the care, storage and delivery of peanuts pledged to CCC as collateral for price support loans.

Peanut meal. Any meal, cake, pellets, or other forms of residue remaining after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

Peanut product. Any product, other than peanut oil or peanut meal, that is manufactured or derived from peanuts including, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted peanuts (either shelled or in-shell), pressed peanuts, and peanut granules.

Peanut receiving and warehouse contract. Form CCC–1028, Peanut Receiving and Warehouse Contract (Identity Preserved Storage), or form CCC–1028–A, Peanut Receiving and Warehouse Contract (Commingled Storage), or any other form approved for general use by CCC for the purpose of receiving and warehousing loan collateral peanuts.

Physical supervision. The supervision, in accordance with this part, by representatives of the marketing association or other representatives of the Secretary of the handling and disposition of contract additional or CCC stocks of additional peanuts which have been sold for crushing or export. Such supervision requires, as provided for in this part, the ''physical'' presence of such representatives to observe the actual handling, loading, shelling, transportation, processing, and exportation of peanuts which have been purchased or otherwise designated as additional peanuts.

Pools. Accounting pools established by the marketing association in accordance with this part for peanuts that have been pledged as collateral for price support loans.

Quota loan rate. The price support loan rate that is applicable to a lot of quota peanuts.

Quota peanuts. Peanuts which are:

(1) Eligible for domestic edible uses; and

(2) Marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of part 729 of this title and are not in excess of the effective farm poundage quota established

for the farm on which such peanuts were produced.

Raw peanuts. In-shell peanuts, shelled peanuts, blanched peanuts, or any other classification of peanuts as designated by CCC which have not passed through any other processing operations.

Segregations. For purposes of the peanut price support program, farmers stock peanuts shall be identified by 1 of 3 segregations, as identified and determined by the Federal-State Inspection Service, as follows:

(1) *Segregation 1*. Segregation 1 peanuts are farmers stock peanuts which are free from visible Aspergillus flavus mold and which:

(i) Have at least 99 percent peanuts of one type;

(ii) Have not more than:

(A) 2.49 percent damaged kernels (rounded to nearest whole number);

(B) 1.00 percent concealed damage caused by rancidity, mold or decay;

(C) 0.50 percent freeze damage;

(D) 14.49 percent LSK's; and

(iii) Are free from any offensive odor.

(2) *Segregation 2*. Segregation 2 peanuts are farmers stock peanuts which are free from visible Aspergillus flavus mold and which either:

(i) Have less than 99 percent peanuts of one type; or

(ii) Have more than:

(A) 2.49 percent damaged kernels (rounded to the nearest whole number); or

(B) 1.00 percent concealed damage caused by rancidity, mold, or decay;

(C) 0.50 percent freeze damage; or

(D) 14.49 percent LSK's; or

(iii) Have an offensive odor.

(3) *Segregation 3*. Segregation 3 peanuts are farmers stock peanuts which, upon visible inspection, are found to contain Aspergillus flavus mold: *Provided, further*, however, that, in accordance with such written instructions as the Director may issue, the Director shall permit producers at approved buying points as specified by the Director to have a Segregation 3 lot reconditioned, one time only, so long as the reconditioning is performed at the buying point where the peanuts were initially delivered, and then reinspected visually. Such reinspection may not occur more than 24 hours from the initial inspection except as permitted by the Director and the second grade shall be considered the final grade for the farmers stock peanuts.

Sound mature kernel (SMK). A whole kernel which rides the screen officially designated for the peanut type and as identified and determined by the Federal-State Inspection Service to be SMK's.

Sound split (SS) kernel. A peanut kernel which is a split or broken kernel as identified and determined by the Federal-State Inspection Service to be a SS kernel.

Support rate—(1) *National average*. The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, shall be $610.00 per ton. The national average price support rate for additional peanuts, for each of the 1996 through 2002 crops, shall be the rate announced by the Secretary as set out in §1446.310.

(2) *By types*. With respect to each of the types of peanuts, the price support rate by type shall be the rate so announced on an annual basis by the Secretary for the particular type of peanuts on the basis of the differences between the types and the anticipated weighted average on a national basis of the quality factors and other factors affecting value for the respective types.

Total kernel content (TKC). The TKC of a lot of peanuts is the total of SMK's, SS kernels, and AO kernels in such lot.

TPD. The Tobacco and Peanuts Division of FSA.

Treated seed peanuts. Shelled peanuts that have been modified from their original shelled state by a treatment to make them suitable for seed purposes.

Type. The generally known genetic varieties or types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as identified and determined by the Federal-State Inspection Service.

United States. The 50 States of the United States, Puerto Rico, the territories of the United States, and the District of Columbia.

United States government agency. Any department, bureau, administration, or other agency of the Federal Government or corporation wholly owned by the Federal Government.

Valencia type peanuts produced in the Southwest that are suitable for cleaning and roasting. Peanuts that are identified, determined and classified by the Federal-State Inspection Service as bright hull Valencia peanuts.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38328, Aug. 13, 1991; 60 FR 35835, July 12, 1995; 61 FR 37623, July 18, 1996; 62 FR 62692, Nov. 25, 1997; 63 FR 41713, Aug. 5, 1998; 65 FR 8247, Feb. 18, 2000]

§ 1446.104 Performance based upon action or advice of a representative of the Secretary.

The provisions of part 791 of this chapter with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 1446.105 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the handler will be paid only upon the handler's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

Subpart B—Basic Handler Operations

§ 1446.201 General handler provisions.

(a) *Handler registration and approval*. To avoid marketing penalties otherwise provided in this part for failure to register as a handler, each person who plans to acquire peanuts for processing or resale must register as a handler and be approved as a handler in accordance with this paragraph.

(1) *Registration*. Registration must be made on the form FSA–1008, Application for Handler Card, and must be filed:

(i) For each marketing year in which such person expects to acquire peanuts for processing or resale.

(ii) With each marketing association that serves the marketing area in which such person plans to acquire peanuts during the applicable marketing year.

(iii) Prior to the time such person acquires peanuts, during the respective marketing year, within the marketing area served by such marketing association.

(2) *Approval*. The determination of whether a handler will be approved shall be made by the applicable marketing association in which the registration was filed and, in the case of approval, such approval shall be evidenced by a handler registration number that is issued by such marketing association.

(b) *Handler of loan peanuts*. To handle loan peanuts, either quota or additional, a person must be approved as a handler and must contract with the marketing association on form CCC–1028 or form CCC–1028–A to handle such peanuts. To contract to handle loan peanuts, the handler must meet all requirements of the applicable warehousing contract with respect to receiving, handling and storing loan peanuts.

(c) *Handler of contract additional peanuts*. To handle contract additional peanuts in a marketing area, a person must be approved as a handler for that area in accordance with this part.

(d) *Marketing assessments and marketing penalties*. A handler shall collect and pay marketing assessments and marketing penalties in accordance with the provisions in part 729 of this title.

(e) *Penalties and other remedies*. Any handler that fails to register in accordance with this section shall be subject to all penalties that may apply to handlers under this part and all other remedies that apply against handlers. Further, such handler shall be subject to penalties for non-registration as may apply.

§ 1446.202 Peanut buyer card and buying point card.

(a) *Peanut buyer card*. The marketing association which approves a handler will assign a registration number to such handler and CCC will issue an embossed peanut buyer card which will show the handler's registration number, name and address. The handler will use the buyer card for identification when buying or selling peanuts.

(b) *Buying point card*. CCC will issue a buying point card to the Federal-State Inspection Service for delivery to each

handler who operates a buying point at which peanuts are inspected. The buying point card will show a buying point number that will be used to identify the physical location of such buying point.

§ 1446.203 Marketing card entries and collection of assessments, penalties and debts.

The handler shall make marketing card entries and shall collect assessments, penalties and debts in accordance with the provisions in this part and in part 729 of this title.

(a) *Indebtedness to the United States due to peanut marketing penalties.* As provided in part 729 of this title, if a producer is indebted to the United States for a peanut marketing penalty, such penalty shall result in a lien in favor of the United States on any peanuts in which such producer has an interest and any person who acquires peanuts from such producer shall be considered to have notice of such lien at the time such lien becomes attached. Except with respect to any lien that was perfected before the peanut poundage quota lien became attached in those cases not involving peanuts placed in the price support loan inventory, any person who acquires peanuts from such producer shall deduct the lien amount plus any applicable interest from the proceeds otherwise due to such producer as a result of the acquisition of the peanuts. Any deducted amount shall be paid to CCC in accordance with instructions issued by the Deputy Administrator. In the event a required deduction is not made from the proceeds for such peanuts, the person who acquires such peanuts shall be liable to CCC for the amount of the lien, to the extent of the market value of such peanuts or proceeds of the peanuts whichever is higher.

(b) *Farmers Home Administration or Farm Service Agency lien.* If a Farmers Home Administration or Farm Service Agency lien has been recorded on the marketing card that was issued for the use of a producer when marketing peanuts, the purchaser of such peanuts shall make the check, for the proceeds from such peanuts, payable jointly to the producer and the Farm Service Agency. However, if a peanut poundage quota lien was also recorded on the marketing card against such producer, the check shall be made payable jointly to the producer, CCC and the Farm Service Agency.

[56 FR 16230, Apr. 19, 1991, as amended at 61 FR 37623, July 18, 1996]

§ 1446.204 Transmittal of collections of penalties and claims.

(a) *Commercial purchases.* A handler shall use form FSA–1012, Buyer's Transmittal of Claims and/or Marketing Penalty, to transmit to FSA any marketing penalty or peanut poundage quota lien that is collected directly or indirectly from a producer at the time such producer marketed peanuts as quota commercial or contract additional peanuts. Such collections shall be made in accordance with the requirements of part 729 of this title. A collection is considered to have been made at the time of marketing the peanuts. Each collection shall be sent to the county FSA office which issued the marketing card and, unless otherwise approved by the Executive Vice President, CCC, shall be sent within 15 days after the collection is made.

(b) *Loan peanuts.* Withholdings from the loan value due a producer which represent collections of marketing penalties, peanut poundage quota liens or U.S. claims shall be transmitted or handled in accordance with instructions issued by the marketing association or CCC.

Subpart C—Warehouse Storage Loans

§ 1446.301 Eligibility of peanuts for price support at the quota loan rate.

For peanuts to be eligible for a price support loan at the quota loan rate such peanuts:

(a) Must be eligible peanuts that were produced by an eligible producer;

(b) Must be Segregation 1 peanuts;

(c) If mechanically dried, must contain at least 6 percent moisture;

(d) Must not contain more than:

(1) 10.49 percent moisture;

(2) 10 percent foreign material; or

(3) 14.49 percent LSK's;

(e) When added to prior marketing of quota peanuts from the farm, must not exceed the effective quota established for the farm on which such peanuts were produced.

§ 1446.302 Eligibility of peanuts for price support at the additional loan rate.

(a) *General*. For peanuts to be eligible for a price support loan at the additional loan rate, such peanuts:

(1) Must be eligible peanuts that were produced by an eligible producer;

(2) must not contain more than:

(i) 10.49 percent moisture;

(ii) 10 percent foreign material; or

(iii) 14.49 percent LSK's.

(b) *Exception to general requirements*. Notwithstanding the provisions in paragraph (a) of this section:

(1) *Seed peanuts*. Peanuts that were produced for seed under the auspices of a State agency that controls the production of seed peanuts may receive a price support loan at the additional loan rate if:

(i) Such peanuts are eligible peanuts that were produced by an eligible producer; and

(ii) In accordance with this part, the handler purchases the peanuts from the loan inventory for domestic seed use in accordance with this part.

(2) *Peanuts with excess moisture, foreign material, or LSK's*. Peanuts that contain excessive moisture, foreign material, and/or LSK's may receive a price support loan at the additional loan rate if the marketing association determines:

(i) That the moisture level is acceptable for storage until such peanuts may be crushed; and

(ii) That the producer made a bona fide effort to clean such peanuts prior to offering such peanuts as collateral for a price support loan.

§ 1446.303 Delivery of peanuts for price support advance.

(a) *Warehouse storage loans*. Any warehouse operator who has entered into a contract with the marketing association to receive and store peanuts shall inform producers that price support advances are available and shall make such advances on eligible peanuts tendered for price support as provided in such contract.

(b) *Where available*. Unless otherwise approved by the marketing association or by CCC, producers must deliver farmers stock peanuts to any participating warehouse that is located in the same marketing area in which the peanuts were produced. The names and locations of participating warehouses may be obtained from the office of the appropriate marketing association or from State or county FSA offices.

(c) *Contract requirements*. Any contract for receiving and storing peanuts pledged as collateral for a price support loan shall require the warehouse operator to:

(1) Examine the producer's marketing card to determine price support eligibility;

(2) Make entries on the marketing card as required by § 729.304 of this title and by this part; and

(3) Execute a form FSA–1007 in accordance with this part for each lot of peanuts on which a price support advance is made.

(d) *Time*. Price support advances to eligible producers on peanuts of any crop will be available from the beginning of the marketing year through the following January 31 or such later date as may be established by the Executive Vice President, CCC.

(e) *Inspection*. An inspector shall determine the type and quality of each lot of farmers stock peanuts that is delivered to a participating warehouse for a price support advance from the marketing association.

(f) *Producer agreement*. To obtain a price support advance, the producer shall provide written authorization to the marketing association, and in the form prescribed by the applicable marketing association, to pledge the producer's peanuts to CCC as collateral for a warehouse storage loan and in so doing, the producer shall relinquish any right to redeem or obtain possession of such peanuts.

(g) *Advance to the producer*. For each lot of peanuts delivered by a producer to a participating warehouse for a price support advance, the warehouse operator, acting in behalf of the marketing association:

(1) Shall inquire of each producer as to whether any liens, other than a statutory peanut poundage quota lien, exist on peanuts offered for loan and shall note the response on form CCC–1041, Warehouse Receipt and Draft (A failure to make such an inquiry shall render the warehouseman liable for the amount of the lien to the extent of any loss to CCC);

(2) Shall advance to the producer the applicable loan value of such peanuts. However, if a lien exists, the loan advance draft, form CCC–1041, shall be made payable jointly to the producer and each known lienholder except in those cases in which a peanut poundage quota lien was attached, as provided in part 729 of this title before any other lien was recorded. In such case the peanut poundage quota lien shall be deducted from the proceeds and a draft may be issued for any remaining balance;

(3) Shall deduct from such advances any:

(i) Marketing penalty;

(ii) Marketing assessment as provided in part 729 of this title;

(iii) Peanut poundage quota lien;

(iv) Assessment or excise tax imposed by State law;

(v) U.S. claim;

(vi) Farm storage facility loan installment payment that is currently due to CCC; and

(vii) Any other debt that is owed by such producer to a United States government agency.

(4) As applicable, shall transmit, in accordance with applicable instructions, such deducted amounts to the:

(i) County FSA office;

(ii) Applicable State agency; or

(iii) CCC; and

(5) If such peanuts were produced in the Southwestern area, and upon the prior agreement of the producer, may deduct from such advance an amount approved by CCC, but not to exceed $2.00 per net weight ton of peanuts, to be used in financing the marketing association's peanut related activities outside the price support program.

[56 FR 16230, Apr. 19, 1991, as amended at 58 FR 41626, Aug. 5, 1993]

§ 1446.304 Price support loans involving estates, trusts or minors.

(a) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or administrator of a deceased person's estate, a guardian of an estate or of a ward or incompetent person, and trustees of a trust estate may be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the peanut production of the receiver, executor, administrator, guardian, or trustees attributable to the person represented shall be considered to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are valid, as determined by CCC, and such person has the authority to sign the applicable documents.

(b) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements:

(1) The right of majority has been conferred on such minor by court proceedings or by statute; or

(2) A guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or

(3) An acceptable bond is furnished under which a surety acceptable to CCC guarantees to protect CCC from any loss for which the minor would be liable had such minor been an adult.

§ 1446.305 Additional peanuts ineligible for price support.

(a) *Marketing penalty.* A marketing penalty is due if additional peanuts are marketed or considered marketed in any manner other than:

(1) Through a price support loan at the additional loan rate; or

(2) Through purchase for crushing or export by a handler who, in accordance with this part, has an approved contract with the producer to purchase peanuts for such purpose.

(b) *Delivery to avoid penalty.* Notwithstanding the provisions in paragraph (a) of this section, a person who has produced additional peanuts may avoid a marketing penalty on such peanuts

through forfeiting such peanuts by delivering such peanuts to the marketing association for the area where the peanuts were produced and in accordance with instructions issued by the marketing association if:

(1) Such person is not an eligible producer; and

(2) Such person does not have a contract with a handler to purchase such peanuts for crushing or exportation.

(c) *Interest due.* A producer who pledges peanuts as collateral for a price support loan at the additional loan rate shall refund the loan advance on such peanuts with interest if, subsequent to the time the peanuts are pledged for the loan, it is brought to the attention of the marketing association that such person is not an eligible producer. Interest shall be due:

(1) At the same interest rate that was applicable on funds borrowed from CCC by the marketing association on the date the loan was disbursed.

(2) From the date the loan was disbursed to the date of repayment.

§ 1446.306 Commingling of peanuts.

To facilitate handling and marketing, unless prohibited by a handler's storage contract with the marketing association, a handler may store farmers stock loan peanuts on a commingled basis with peanuts owned by such handler if such peanuts are of like crop, type, area, and segregation.

(a) *Accounting for commingled peanuts.* Except for peanuts purchased from CCC for domestic edible use on an in-grade and in-weight basis, commingled peanuts shall be exchanged on a dollar value basis. Accordingly, when loan peanuts are removed from the warehouse they must be inspected as farmers stock peanuts by an inspector and accounted for on a dollar value, based on the quota loan rate, less a one-time adjustment for shrinkage for each crop.

(b) *Dollar value shrinkage adjustment.* For peanuts that are graded out and accounted for:

(1) Before February 1 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(i) 3.5 percent for Virginia-type peanuts; and

(ii) 3.0 percent for all other peanuts.

(2) After January 31 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(i) 4.0 percent for Virginia-type peanuts; and

(ii) 3.5 percent for all other peanuts.

(c) *Maintaining copies of the FSA–1007's.* The handler shall maintain a copy of each form FSA–1007 that was issued for any peanuts that are placed in commingled storage and that is issued for any peanuts removed from storage.

(d) *Good commercial practice.* The handler shall receive, store and deliver all such peanuts in accordance with good commercial practice and any instructions provided by CCC.

§ 1446.307 Disaster transfer of Segregation 2 or Segregation 3 peanuts from additional loan to quota loan.

(a) *Transfer of Segregation 2 and Segregation 3 peanuts.* Except as otherwise provided in this section, after a producer has completed marketing all peanuts produced on the farm, such producer may transfer a loan on Segregation 2 or Segregation 3 additional peanuts to a quota loan.

(b) *Limitation of amount eligible for transfer.* A transfer made in accordance with this section shall not exceed the smaller of:

(1) The difference between:

(i) The total quantity of Segregation 1 peanuts marketed from the farm, plus the amount of peanuts retained on the farm for seed or other use, and

(ii) The effective farm poundage quota, excluding quota pounds transferred to the farm in the fall; or

(2) Twenty-five percent of the effective farm poundage quota, excluding quota pounds transferred to the farm in the fall.

(c) *Offset of CCC losses.* As provided in this part, if a producer transfers an additional loan to a quota loan in accordance with the provisions of this section, any pool proceeds otherwise due such producer from peanuts in another pool shall be reduced by the amount of any losses to CCC on the peanuts so transferred.

(d) *Loan value for transferred peanuts*—(1) *Segregation 2 peanuts.* The quota loan value for any lot of Segregation 2 peanuts transferred from an

additional loan to a quota loan shall be determined by multiplying 70 percent of the quota loan rate that otherwise would have been applicable for such lot of peanuts as quota peanuts, exclusive of any discount for damaged kernels, by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 2 peanuts transferred in accordance with this section.

(2) *Segregation 3 peanuts*. The quota loan value for any lot of Segregation 3 peanuts transferred from an additional loan to a quota loan shall be determined by multiplying 70 percent of the quota loan rate that otherwise would have been applicable for such lot of peanuts as quota peanuts, exclusive of any discount for damaged kernels, by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 3 peanuts transferred in accordance with this section.

(e) *Transfer provisions*—(1) *Where to apply*. Producers who are eligible to transfer additional loan peanuts to the quota loan pool in accordance with the provisions of this section may apply for such transfers with the county FSA office.

(2) *Determination of the amount eligible for transfer*. The county office shall determine, in accordance with paragraph (b) of this section, the quantity of additional peanuts which are eligible for transfer.

(3) *Designation of peanuts to be transferred*. The producer must indicate to the county office the net weight and applicable form FSA–1007 serial numbers for the peanuts to be transferred.

(4) *Applicability of marketings*. Any peanuts that are transferred from an additional loan to a quota loan shall be considered as marketings of quota peanuts and the applicable records shall be appropriately adjusted.

(f) *Supplemental loan payment*. The difference between the additional and quota loan rates for such peanuts, less the appropriate adjustment for the marketing assessment, shall be advanced by the marketing association to the applicable producer.

(g) *Waiver of right to make transfer*. Notwithstanding any other provisions in this section, an additional loan on Segregation 2 or Segregation 3 peanuts shall not be transferred to a quota loan under this section with respect to that quantity of peanuts for which the producer has executed a waiver of the right to make such a transfer in order to obtain indemnity benefits from the Federal Crop Insurance Corporation or has agreed to such a waiver with any other Federal agency.

[56 FR 16230, Apr. 19, 1991, as amended at 57 FR 49633, Nov. 3, 1992; 61 FR 37624, July 18, 1996]

§ 1446.308 Loan pools.

(a) *Establishment of pools*. (1) Each marketing association shall establish six separate loan pools; one for each of the three segregations of additional peanuts and one for each of the three segregations for quota peanuts. These pools shall be formed without regard to the type of peanuts (Runner, Virginia, Spanish, or Valencia) involved. However, the SWPGA shall also establish 12 separate loan pools for Valencia peanuts produced in New Mexico, namely, for bright hull peanuts and for dark hull peanuts separately, to include for each of them separate, by segregation, additional peanuts and quota peanuts pools. Each marketing association shall maintain separate, complete and accurate records for each loan pool that is established by the marketing association.

(2) *Eligibility to participate in New Mexico Pools*—(i) *In general*. Except as provided in clause (a)(2)(ii) of this section, in the case of the 1996 and subsequent crops, Valencia peanuts not physically produced in the State of New Mexico shall not be eligible to participate in the pools of the State even if the farm on which the peanuts are produced is constituted for administrative purposes within the State of New Mexico.

(ii) *Exception*. A producer of Valencia peanuts may enter Valencia peanuts that are physically produced in Texas into the pools for New Mexico in a quantity not greater than the average annual quantity of the peanuts that the producer entered into the New Mexico pools for the 1990 through 1995

crops; however, to qualify, the peanuts must be produced on the same farm on which the peanuts were produced during the base years of 1990 through 1995.

(b) *Net gains for quota pools.* Net gains from peanuts in each quota pool shall consist of the amount by which the proceeds from the sale of the peanuts in such pool are in excess of the indebtedness on the peanuts in such pool.

(c) *Net gains for additional pool.* Net gains for peanuts in each additional pool shall consist of:

(1) The net gains which are in excess of the indebtedness on the peanuts placed in such pool; less

(2) Any amount as provided in paragraph (d) of this section that is allocated to offset any loss on the pools for Segregation 1 quota peanuts, and any other amount properly offset.

(d) *Recovery of losses in quota area loan pools.* (1) If the loan indebtedness on the peanuts in a quota area pool exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered using the following sources in the following order of priority:

(i) Proceeds due any individual producer from any pool, as a result of the transfer of peanuts for pricing purposes from an additional loan pool to a quota loan pool, pursuant to the provisions in § 1446.307.

(ii) Gains of any producer in the same pool, by the amount of pool gains attributed to the same producer from the sale of additional peanuts for domestic and export edible use.

(iii) Gains or profits resulting from the sale of additional peanuts, other than Valencia peanuts produced in New Mexico in separate type pools established under paragraph (a) of this section, in the same marketing area for domestic edible use, that are owned or controlled by CCC. This paragraph shall not apply to gains or profits from the sale of peanuts that were produced on farms with 1 acre or less of peanut production.

(iv) Marketing assessments, collected from producers under § 729.316 of this title, that the Secretary determines are necessary to cover losses in area quota pools.

(v) Gains or profits from quota pools in other marketing areas, other than separate type pools established under paragraph (a) of this section for Valencia peanuts produced in New Mexico.

(vi) Gains or profits resulting from the sale of additional peanuts in other marketing areas, other than Valencia peanuts produced in New Mexico in separate type pools established under paragraph (a) of this section, for domestic edible use, that are owned or controlled by CCC. This paragraph shall not apply to gains or profits from the sale of peanuts that were produced on farms with 1 acre or less of peanut production.

(vii) Marketing assessments, collected from handlers under § 729.316 of this title, that the Secretary determines are necessary to cover losses in area quota pools.

(viii) Increased marketing assessments on quota peanuts in the production area covered by the pool, which shall be assessed as needed and collected from producers under § 729.317 of this title.

(2) The exceptions provided for Valencia peanuts in paragraph (d)(1) of this section shall only apply as to prevent offsets between pools for each of the Valencia types (bright-hull and dark-hull) for New Mexico and other peanuts.

(e) *Pool distribution.* (1) Net gains as determined in accordance with this section on peanuts in each area pool shall be distributed to each producer who placed peanuts in that pool in proportion to the dollar value of peanuts placed in such pool by that producer, except that the proceeds available for the amount of distribution shall be subject to any other conditions and offsets set forth in this section; and

(2) Distributions shall not be assigned to any other party.

(f) *Loan indebtedness.* With respect to determining the gains and losses in accordance with this section for loan pools for quota and additional peanuts, the term ''indebtedness'' with respect to a pool shall include, but is not limited to, the following expenses associated with such peanuts:

(1) Loan advance to producers.

(2) Inspection fees.

(3) Storage and handling charges.

(4) Shelling costs.

(5) Transportation and related charges.

(6) Administrative and supervision expenses.

(7) Interest applicable to any repayable amount.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38329, Aug. 13, 1991; 61 FR 37624, July 18, 1996]

§ 1446.309 Immediate buyback and sale of loan peanuts to the storing handler.

(a) *''Immediate buyback'' purchase of additional peanuts*—(1) *Producer consent.* Except as provided in this section, if the producer of a lot of additional peanuts has consented to an ''immediate buyback'' of such peanuts by a handler, as indicated by a designation recorded on the form FSA–1002, the handler that acts for the marketing association in advancing funds to the producer for a price support loan at the additional loan rate on such peanuts may purchase such peanuts from the marketing association for domestic edible use in accordance with instructions from the marketing association and at a price equal to 100 percent of the quota loan value of such peanuts plus a handling charge, as determined by the marketing association and approved by CCC, to cover all costs incurred with respect to such peanuts for inspection, warehousing, shrinkage, and other expenses.

(2) *Time for buyback purchase.* An ''immediate buyback'' purchase may be made only in connection with the marketing association involved in the price support loan and only on the date on which the peanuts were delivered by the producer as collateral for a price support loan. Such sales are for the account of CCC.

(3) *Handler requirements.* For each ''immediate buyback,'' the handler shall:

(i) Act for the marketing association by making a price support advance to the producer at the additional loan rate and in the same manner that would be applicable if an ''immediate buyback'' were not involved;

(ii) If applicable, use such handler's funds to pay to the producer any premiums that the parties had agreed upon in order to effect the delivery of such peanuts;

(iii) Pay for the peanuts by a check made payable to CCC. Such check must be from the handler's funds and in an amount equal to the quota loan value of the peanuts plus any handling charges; and

(iv) Transmit the handler's check and the applicable form FSA–1007 to the marketing association by midnight of the third workday (excluding Saturdays, Sundays, and Federal holidays) following the day the peanuts were inspected.

(4) *Domestic edible use.* The handler's check and the applicable form FSA–1007 will identify the peanuts as additional peanuts that may be used for domestic edible use.

(5) *Loan pool credit.* Irrespective of the segregation of such peanuts, the receipts from the ''immediate buyback'' sale will be credited to the additional loan pool for Segregation 1 peanuts and the peanuts will be treated as Segregation 1 peanuts for pool accounting purposes.

(6) *Loan pool participation.* If Segregation 2 or Segregation 3 peanuts are purchased by a handler under the ''immediate buyback'' provisions, the producer of such peanuts shall participate in the Segregation 1 additional loan pool in the same manner as would apply if such peanuts had been Segregation 1 peanuts.

(7) *Additional restrictions on ''immediate buyback'' sales.* (i) Additional peanuts of the type or Segregation contracted for export or crushing from a farm may not be purchased from such farm under the ''immediate buyback'' provisions of this section until all of the producer's contracts for additional peanuts for the relevant crop year have been satisfied for the type or Segregation to be used for the buyback, as evidenced by a contract balance of zero for that type or Segregation of peanuts on the farm's marketing card;

(ii) An immediate buyback that otherwise is prohibited by paragraph (a)(7)(i) of this section may be permitted by CCC in the case of any producer on a farm who does not share in the additional peanuts for which there is a contract.

(iii) An agreement between the handler and producer to void a contract that was approved in accordance with this part shall not reduce the balance shown on the producer's marketing card for contract additional peanuts and until such contract is renewed and satisfied the producer's additional peanuts of the same type or Segregation as were covered by that contract shall not be eligible for that crop year for purchase under an ''immediate buyback.''

(b) *Purchase of quota or additional loan peanuts.* Quota loan peanuts, or additional loan peanuts that were not purchased by the handler under the ''immediate buyback'' provisions, may be bought for domestic edible use in accordance with this paragraph on an in-grade and in-weight basis.

(1) *In-grade and in-weight purchases.* A handler may purchase loan peanuts, either quota or additional, on an in-grade and in-weight basis for domestic edible use:

(i) Under terms and conditions established by the marketing association and CCC;

(ii) If such peanuts are eligible for domestic edible use; and

(iii) If such peanuts are stored in a warehouse that is operated by such handler.

(2) *Pricing.* Except with respect to ''immediate buybacks,'' as provided for in this section, the price for peanuts purchased on an in-grade and in-weight basis shall be determined by the marketing association or CCC, as applicable, for the account of CCC, but shall not be less than the applicable carrying charges plus, with respect to each lot of peanuts purchased:

(i) 105 percent of the quota loan value that was or would be applicable to the quantity of loan peanuts in such lot, if paid for not later than December 31 of the marketing year; or

(ii) 107 percent of the quota loan value that was or would be applicable to the quantity of loan peanuts in such lot, if paid for after December 31 of the marketing year.

[56 FR 16230, Apr. 19, 1991, as amended at 57 FR 27145, June 18, 1992; 65 FR 8247, Feb. 18, 2000]

§ 1446.310 Additional peanut support levels.

(a) The national support rate for additional peanuts for the 1996 crop is $132 per short ton.

(b) The national support rate for additional peanuts for the 1997 crop is $132 per short ton.

(c) The national support rate for additional peanuts for the 1998 crop is $175 per short ton.

[62 FR 62693, Nov. 25, 1997, as amended at 64 FR 48942, Sept. 9, 1999]

§ 1446.311 Minimum CCC sales price for certain peanuts.

(a) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1996 crop is $400 per short ton.

(b) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1997 crop is $400 per short ton.

(c) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1998 and subsequent crops is $400 per short ton.

[62 FR 62693, Nov. 25, 1997, as amended at 64 FR 48942, Sept. 9, 1999]

Subpart D—Handling Contract Additional Peanuts—General Provisions

§ 1446.401 Contracts for additional peanuts for crushing or export.

An approved handler may contract with a producer to deliver additional peanuts for exporting or for crushing. In order to be valid, the contract must meet the eligibility requirements in this section and must be approved by the county committee that serves the county in which the producing farm is located for administrative purposes.

(a) *Contract form and addendum*—(1) *Contract form.* In order to be approved by the county committee, the contract must be completed on Form CCC–1005, Handler Contract With Producers for Purchase of Additional Peanuts for Crushing or Export, or on a form approved by the Executive Vice President, CCC, or designee, which follows

the organization of the CCC–1005 and contains as a minimum all of the requirements provided for in paragraph (c)(2) of this section.

(2) *Availability of CCC–1005.* The marketing association shall make available a form CCC–1005 to each approved handler and to any producer upon request.

(3) *Addenda.* The handler may use an addendum to a contract form if such addendum neither negates nor conflicts with any provision in this part. Any existing addendum to the contract which relates to the marketing of additional peanuts must accompany the contract at the time the contract is filed with the county committee.

(b) *Submitting contracts for approval*—(1) *Eligible handlers.* Only a handler who has been approved by the marketing association to handle contract additional peanuts may contract with producers to buy additional peanuts for crushing or exportation, or both.

(2) *Producer-handlers.* A person who has been approved as a producer-handler under part 1421 of this title may not contract with himself/herself to purchase contract additional peanuts that he/she may produce.

(3) *Place and time for submitting.* In order to be considered for approval, any contract between a handler and producer for the purchase of additional peanuts shall be completed and submitted:

(i) *Place.* To the county FSA office of the county in which the farm is administratively located.

(ii) *Time.* On or before September 15 of the year in which the crop is produced; except that:

(A) Should September 15 fall on a Saturday or Sunday, or other nonworkday the contract must be submitted for approval no later than the last workday immediately preceding the final contracting date.

(B) If the Executive Vice President, CCC, determines that damaging weather such as drought, hail, excessive moisture, freeze, tornado, hurricane or excessive wind, or related condition such as insect infestations, plant diseases, or other deterioration of the peanut crop, including aflatoxin, is expected to have significant national impact on peanut production, the Executive Vice President may extend nationally, by up to 15 days, the final date for submitting contracts for approval. Such announcement shall be made no later than September 5 of the year in which the crop is produced.

(c) *Contract approval.* (1) A contract between a handler and a producer for additional peanuts for crushing or export shall not be approved by the county committee, if otherwise eligible, unless the county committee has been notified by the State Executive Director that the handler has been approved to contract additional peanuts and that such handler has submitted the letter of credit that is required in accordance with the provisions in this part.

(2) In order to be approved, the following information must appear on the contract:

(i) The name and address of the operator;

(ii) The name and address of each producer sharing in the proceeds of the contract additional peanuts;

(iii) The State and County code, and farm number of the farm on which the additional peanuts are to be produced;

(iv) The name, address, and registration number of the handler;

(v) The pounds of Segregation 1, Segregation 2, and/or Segregation 3 peanuts that are contracted;

(vi) The final contract price to be paid by the handler and shown as a set percentage of the loan rate for quota peanuts of the type indicated on the contract; except that such final contract price shall not be less than the additional loan rate for the type of peanut indicated on the contract. A contract or an addendum to a contract that provides for a conditional supplemental payment to the producer will not be considered to negate the final contract price only if the supplemental payment to be made is expressed in a manner that a third party may determine the amount of the supplemental payment without a need for additional negotiations;

(vii) A disclosure by the producer of any liens or encumbrances on the peanuts;

(viii) The signature of the farm operator;

(ix) The signature of each person having an interest as a producer in the

contract additional peanuts that are produced on the farm;

(x) The signature of the handler or the authorized agent of the handler; and

(xi) A prohibition against changing the price.

(3) The county committee, or a person designated in writing by the county committee, shall approve each form CCC–1005 that conforms with the provisions in this section.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38329, Aug. 13, 1991; 61 FR 37624, July 18, 1996]

§ 1446.402 Approval as handler of contract additional peanuts.

(a) *General.* By June 15 preceding the beginning of the marketing year in which such additional peanuts will be acquired, any handler who plans to acquire contract additional peanuts in accordance with this part for crushing or for exporting must:

(1) *Application.* File an application with each marketing association that serves the area in which such handler plans to acquire contract additional peanuts. Such application:

(i) *Form.* Must be on a form or in a format provided by the marketing association.

(ii) *Method of supervision.* Must indicate the method of supervision, physical or nonphysical, selected by the handler for purposes of accounting for the disposition of any contract additional peanuts acquired by such handler.

(2) *Evidence of adequate assets and adequate facilities.* Provide evidence that is acceptable to the marketing association and CCC that such handler has:

(i) *Assets.* Adequate assets to assure compliance with the provisions in this part with respect to such handler's obligation to crush or export contract additional peanuts acquired by such handler; and

(ii) *Facilities.* Adequate facilities to handle the acquisition and disposition of any contract additional peanuts acquired by such handler.

(3) *Letter of credit for prior crop years.* Establish an irrevocable letter of credit, or increase any existing letter of credit applicable for a previous crop year, in an amount necessary to cover any outstanding marketing penalties on peanuts produced in such crop year which are still under administrative appeal or are unpaid. This requirement is in addition to any letter of credit requirement for the current year.

(b) *Approval.* The marketing association, acting on behalf of CCC, shall approve, in accordance with this part, each application that is timely filed in accordance with this section, or is filed by such extended time as may be approved by the Executive Vice President, CCC, provided that in either case, the applicant:

(1) Has selected a method of supervision;

(2) Has a U.S. address;

(3) Has provided evidence of adequate assets and adequate facilities to assure compliance with the provisions in this part with respect to the disposition of contract additional peanuts; and

(4) Has complied with the requirements of paragraph (a)(3) of this section.

(c) *Rescission of approval.* Unless the Executive Vice President, CCC, shall otherwise agree in writing, a handler's previous approval to contract for the purchase of additional peanuts for exporting or crushing and to receive and handle such peanuts shall be considered to be rescinded upon such handler's use of facilities, other than those on which the approval was based, to receive, store, process, or ship contract additional peanuts. However, a rescission will not apply if substituted facilities are approved by the association, in accordance with instructions issued by CCC, when the handler can show, as determined by the association subject to review by the Executive Vice President, that the original facilities are no longer available for use due to circumstances beyond the handler's control such as, but not limited to, fire, flood, wind damage, or mechanical failure. In the event of rescission of a handler's approval, any purchases of peanuts from producers by such handler subsequent to the rescission will be considered as purchases of quota peanuts and will subject the handlers and producers to penalties, as prescribed by this part and in 7 CFR part 729 for marketing excess quota peanuts unless

such peanuts are recorded on the producer's marketing card as a marketing of quota peanuts.

(d) *Cost of supervision.* The handler shall bear the cost of supervision irrespective of the method of supervision such handler has chosen.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38329, Aug. 13, 1991]

§ 1446.403 Letter of credit.

(a) *Certification and financial guarantee (letter of credit)*—(1) *Certification.* In order to establish a letter of credit, each handler must certify to the applicable marketing association the quantity of additional peanuts the handler expects to contract for delivery by producers that are served by such marketing association. The certified poundage will be the basis for establishing the letter of credit for the applicable crop. If the certified poundage is less than the actual contracted poundage, the letter of credit required of the handler for the next marketing year shall be subject to increase, as provided in this section.

(2) *Letter of credit.* The handler must present an irrevocable letter of credit to each marketing association that serves the area in which a handler plans to contract or otherwise acquire contract additional peanuts. Such letter of credit shall be issued in a form and by a bank which is acceptable to CCC and except as provided in paragraph (d) of this section shall be submitted to the appropriate marketing association not later than July 31 and before marketing cards will be issued to producers for contract additional peanuts. Unless the provisions of paragraphs (b) and (c) of this section are applicable, the amount of the letter of credit for each area shall be equal to the amount determined by multiplying 140 percent of the national average quota price support rate by, for a handler selecting nonphysical supervision, 8 percent, or, for a handler selecting physical supervision, 5 percent, of the larger of:

(i) Ninety percent of the handler's contracted pounds as recorded on contracts approved by the county committee for the preceding marketing year and in the marketing area; or

(ii) The amount of additional peanuts the handler estimates will be contracted with producers, as certified to the marketing association, for delivery during the current marketing year and in that marketing area.

(b) *Increase in letter of credit.* (1) The amount of the letter of credit required under paragraph (a) of this section shall be increased for any handler:

(i) Who has a poor performance record, as evidenced by previous penalty assessments for violations of the provisions of this part; or

(ii) Who, for purposes of handling peanuts is, as determined by CCC, a partnership, merger, joint venture, or other similar business relationship having officials who were officials of an organization having such a record or is composed in whole or in part by merger, succession, consolidation, association or assimilation, of entities with such a record; or

(iii) Whose total acquisition of farmers stock peanuts during the preceding marketing year from purchases of contract additional peanuts exceeded, by more than 3.0 percent, the pounds on which the letter of credit for the preceding marketing year was based. Nothing in this part shall prohibit CCC from demanding an increase in the letter of credit for the current year in the event the handler has significantly underestimated the handler's purchases for the current year.

(2) The increase in the letter of credit shall be determined in accordance with the guidelines set forth in paragraph (c) of this section.

(c) *Guidelines for increasing letters of credit*—(1) *Increased letter of credit due to history of program violation.* If the handler and/or related entity was assessed penalties for program violations for any of the previous three crop years, the percentage of the pounds of contracted peanuts to which the increase specified in paragraph (b) of this section shall be applied, shall be increased by 6 percent for each year of the three-year period in which such a penalty was assessed, except that:

(i) Such increase for a particular crop year shall be 3 percent rather than 6 percent if, for all violations for that crop year:

(A) The penalties were reduced by the Executive Vice President, CCC, and paid; or

(B) Less than 120 days, or such further period as established by the Executive Vice President, have passed since the penalty assessment was made by the CCC Contracting Officer.

(ii) Previous penalty assessments, other than assessments for violations that involve the importation of additional peanuts, or the failure to properly dispose of additional peanuts, which have been paid shall not be considered as part of the violation history for any crop year if the total violations for such crop year by the handler, and related individuals or entities, involved less than 100,000 pounds of peanuts.

(2) *Waiver of increase.* Notwithstanding (c)(1) of this section, at the discretion of the Executive Vice President, CCC, the increase required under this section may be waived upon the presentment of adequate security as determined acceptable by the Executive Vice President, CCC.

(3) *Inaccurate certification of additional peanuts acquired.* In addition to the increase required by paragraph (c)(1) of this section, if the actual purchase of contract additional peanuts for the previous marketing year exceeds, by more than 3.0 percent, the poundage on which the previous marketing year's letter of credit was based, the pounds determined in accordance with paragraphs (a)(2) (i) and (ii) of this section shall be increased by an amount equal to 3 times the amount of such excess.

(4) *Basis for determining letter of credit amount.* Any letter of credit determination under this section shall be based upon the facts as they exist on June 1 of the calendar year in which the letter of credit is to be supplied.

(5) *Unpaid interest.* References to unpaid penalties in this section shall include associated unpaid interest and unpaid late payment charges.

(d) *Extension of time for filing letter of credit.* Notwithstanding any other provision of this section, upon a request from a handler, the Executive Vice President, CCC, may extend the time for filing of a required letter of credit if such an extension is considered necessary in order for the handler to have sufficient time to acquire necessary financing.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.404 Transfer of contracts prior to delivery.

An approved contract, by which a handler is to purchase additional peanuts from a producer, may not be sold, traded, or assigned except as provided in this section.

(a) *Contract transfer and delivery of contracted peanuts to other handlers.* (1) If a handler is otherwise unable to perform under any contract with a producer for the purchase of additional peanuts due to conditions beyond the handler's control, the handler and the producer may agree to the delivery of the peanuts to another handler under the terms of the original contract or under modified terms except that, the price, quantity, type, segregation or farm number as shown on the original contract may not be changed. Conditions considered beyond the handler's control may include, but are not limited to, insolvency, bankruptcy, death, or destruction of warehouse facilities.

(2) A contract for additional peanuts shall not be transferred to another handler without the prior written approval of the Deputy Administrator. Such transfer shall be approved by the Deputy Administrator only if the Deputy Administrator determines that such transfer will not impair the effective operation of the peanut program.

(3) If the receiving handler:

(i) Has an existing letter of credit, such handler may increase the existing letter of credit to cover the total amount of farmers stock peanuts that is to be transferred. However, any increase must be made within 14 days after the transfer is approved, otherwise any increased letter of credit will not be considered for purposes of determining whether an increase will be required in the next year's letter of credit because of a deficiency in the letter of credit.

(ii) Does not have an existing letter of credit, the transfer shall not be approved unless such handler secures an acceptable letter of credit to cover the amount of farmers stock peanuts that is to be transferred.

(b) *Contract transfer and transfer of delivery obligations to other producers.* If a producer is unable to fully perform the terms of a contract with a handler for the purchase of additional peanuts due to conditions beyond the producer's control or other conditions as may be prescribed by CCC, the handler and the producer or the producer's successor-in-interest may agree to a modification of the contract or to the substitution of another producer either under the original terms of the contract or under modified terms that do not change the original contract price and quantity. Conditions considered to be beyond the producer's control may include, but are not limited to, farm reconstitution in some cases (combinations and divisions), insolvency, bankruptcy, or death but do not include failure to produce the contracted amount from the planted acreage of peanuts due to natural disaster or related conditions or failure to plant sufficient acreage to produce the contracted quantity. Such modifications or transfers of contract obligations shall not be valid without the prior written approval of the Deputy Administrator. A transfer shall be approved only if the Deputy Administrator determines that such modifications or such transfer will not impair the effective operation of the peanut program.

(c) *County committee approval.* Contract modifications other than changes in producer, owner or operator, or changes permitted by this section, may not be approved by the county committee.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.405 Inspection of contract additional peanuts.

The type and quality of each lot of contract additional peanuts delivered under contract shall be determined by the Federal-State Inspection Service when such peanuts are delivered by a producer. To be valid, the inspection results shall be recorded on form FSA–1007 and signed by the inspector.

§ 1446.406 Commingled storage of contract additional peanuts.

(a) *Commingled storage.* A handler may commingle quota loan, quota commercial, additional loan, and contract additional peanuts during storage. In such case the peanuts must be inspected on a farmers stock basis before such peanuts are placed in storage.

(b) *Accounting for commingled peanuts.* Contract additional peanuts in commingled storage shall be accounted for on a:

(1) Dollar value basis under physical supervision.

(2) TKC basis under nonphysical supervision.

§ 1446.407 Handler transfer of contract additional peanuts or transfer of disposition credit.

(a) *Liability and credit for export or crushing.* Except as permitted by this section, a handler shall not:

(1) Sell, assign or otherwise transfer liability for exporting or crushing contract additional peanuts to other handlers, or

(2) Sell, assign, or otherwise transfer credits for exporting or crushing contract additional peanuts to other handlers.

(b) *Transfer of farmers stock contract additional peanuts.* (1) A one-time transfer of farmers stock contract additional peanuts may be made between the entity shown as applicant 1 and the entity shown as applicant 2 on the form FSA–1007 for the peanuts.

(2) Such transfers shall be made within the same marketing area unless approved otherwise by the marketing association or the Deputy Administrator, and in accordance with instructions issued by CCC.

(3) Before the transfer may be approved, the receiving handler's letter of credit shall be amended by an amount that will cover the amount of peanuts transferred and the transferring handler must submit to the marketing association for approval, a form CCC–1006, covering any proposed transfer of farmers stock peanuts.

(4) Such approval must be obtained before any physical movement of the peanuts from the buying point.

(5) The transfer of peanuts as farmers stock peanuts after sale by the producer shall not be permitted unless approved in writing by CCC or the marketing association.

(c) *Transfer of peanuts for processing into products.* (1) Handlers may transfer contract additional peanuts and the liability for the export of contract additional peanuts to a processor of peanut products either as:

(i) Milled peanuts; or

(ii) Farmers stock peanuts under the provisions of paragraph (b) of this section.

(2) Such transfer shall be made in accordance with the provisions of this part.

(d) *Transfer of export credit for peanuts which have been exported.* Credit for peanuts that have been exported under the provisions of this part will be given to the applicant shown on the form FV–184–9 for the lot of peanuts that has been exported. However, if a disclaimer to the credit for export is submitted with the applicable form FV–184–9, the export credit will be transferred to the person to whom the credit was assigned.

(e) *Transfer of credit for crushing.* Disposition credit earned for peanuts crushed in accordance with the provisions of this part and under the supervision of the marketing association may be assigned to another person if a disclaimer to the credit for crushing is submitted with the applicable form FV–184–9.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.408 Decreasing or drawing upon a letter of credit.

(a) *Decreasing the letter of credit to reflect TKC obligation.* Any existing irrevocable letter of credit that has been presented by a handler may be decreased after January 31 of the calendar year following the year in which the peanuts were produced, or such earlier date as may be authorized by the Deputy Administrator, State and County Operations, if the final TKC obligation determined for such handler, when converted to a farmers stock peanuts basis by dividing the TKC pounds by 0.795 for runner peanuts; 0.75 for Spanish peanuts; 0.735 for Virginia peanuts; or 0.77 for Valencia peanuts, is less than the amount that would be applicable for such handler and for such amount of farmers stock peanuts as determined in accordance with § 1446.403 of this part. The letter of credit may be decreased to the amount so determined.

(b) *Adjusting the letter of credit for acceptable proof of disposition.* The handler shall deliver to the marketing association satisfactory evidence as described in this part, to verify that contract additional peanuts have been exported or otherwise disposed of in accordance with the provisions of this part. On January 31, of the calendar year following the year in which the peanuts were produced, and monthly thereafter of such following year, the marketing association shall permit a reduction of the letter of credit if the existing letter of credit exceeds 140 percent of the national average quota price support rate for the applicable crop times the farmers stock equivalent of the remaining TKC obligation as determined in the same manner as provided in paragraph (a) of this section.

(c) *Drawing against the letter of credit.* (1) If less than 16 days remain before the expiration of a handler's letter of credit, and upon authorization by CCC, the marketing association may draw against the letter of credit and apply the amount toward any penalty due for failure to properly dispose of, or account for, contract additional peanuts in accordance with this part if:

(i) By the final disposition date required in this part, a deficiency remained in the handler's obligation to crush or export contract additional peanuts;

(ii) By the date required in this part, the handler did not provide satisfactory documentary evidence of the full export of peanuts or peanut products; or

(iii) The handler has committed another violation of this part with respect to such peanuts.

(2) Any draw down against a letter of credit shall not compromise any penalty due CCC if the letter of credit is insufficient to cover the full amount of the penalty or prevent any re-determination of whether there has been a proper disposition of and/or accounting for peanuts.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.409 Access to facilities.

A handler, by entering into contracts to receive contract additional peanuts, or any person or firm otherwise receiving contract additional peanuts, shall be considered to have agreed that any authorized representative of CCC or the marketing association:

(a) May enter and remain upon any of the premises of the handler when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, milled, blanched, crushed, packaged, shipped, sized, processed into products, or otherwise handled;

(b) May inspect such peanuts and the oil, meal, and other products thereof; and

(c) May inspect the premises, facilities, operations, books, and records of the handler to the extent necessary to determine that such peanuts have been handled in accordance with this part.

§ 1446.410 Disposition date.

(a) *Final disposition date.* To avoid a penalty as provided in this part, a handler shall dispose of all contract additional peanuts, in accordance with the provisions in this part, by the final disposition date. Except as provided in paragraph (b) of this section, the final disposition date shall be October 15 of the year following the calendar year in which the crop was grown.

(b) *Extension of final disposition date.* The final disposition date for an individual handler may be extended by the marketing association to November 30 of the year following the calendar year in which the crop was grown if, by the final disposition date identified in paragraph (a) of this section, the handler files a written request with the marketing association that specifies the number of pounds for which an extension is requested.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991; 57 FR 27145, June 18, 1992; 61 FR 37625, July 18, 1996]

§ 1446.411 Export provisions.

(a) *Export to a U.S. Government agency.* Except for the exportation of raw peanuts to the military exchange services of the United States for processing outside the United States, the export of peanuts in any form by or to a United States Government agency shall not be considered as export to an eligible country, but shall instead be considered a domestic edible use of such peanuts. However, sales to a foreign government which are financed with funds made available by a United States agency, such as the Agency for International Development or CCC, will not be considered sales to a United States Government agency if the peanuts are not purchased by the foreign buyer for transfer to an agency of the United States.

(b) *Export to an eligible country.* All contract additional peanuts which are not crushed domestically (including approved processing into flakes) and which are eligible for export shall be exported in accordance with the provisions of this part to an eligible country as peanuts or peanut products.

§ 1446.412 Evidence of export.

To receive credit toward an obligation to dispose of contract additional peanuts in accordance with this part, the handler must:

(a) *Certified statement.* Provide a statement signed by the handler specifying the name and address of the consignee and certifying that the peanuts have been exported.

(b) *Documentation.* Not later than 45 days after the final disposition date provided in this part, or a later date established by the Director, TPD, for cases where the Director finds that the handler has made a good faith effort to furnish documentation in a timely manner and that the failure to do so was due to conditions beyond the control of the handler, furnish to the marketing association or CCC the following documentary evidence of the export of peanuts or peanut products:

(1) *Export by water.* For peanuts or peanut products and peanut products that were exported by water, a nonnegotiable original or original duplicate copy (not a machine made copy) of an on-board ocean bill of lading. Such bill of lading must have been signed on behalf of the carrier and must include:

(i) The date and place of loading such peanuts on-board the vessel;

(ii) The weight of the peanuts, peanut meal, or products exported;

(iii) The name of vessel;

(iv) The name and address of the U.S. exporter;

(v) The name and address for the foreign buyer;

(vi) The country of destination; and

(vii) For peanut meal which is unsuitable for use as feed because of contamination by aflatoxin, the statement required on the bill of lading in accordance with this part.

(2) *Export by rail or truck*. For peanuts and peanut products that were exported by rail or truck:

(i) A copy of the bill of lading that must include the weight of the peanuts or peanut meal or products exported, and for peanut meal that is unsuitable for feed use because of contamination by aflatoxin, the statement required on the bill of lading in accordance with this part; and

(ii) A copy of the Shipper's Export Declaration or, in the alternative, a U.S., Canadian or Mexican Customs' document which shows entry into the country; or

(iii) Other documentation that is acceptable to the marketing association.

(3) *Export by air*. For peanuts and peanut products that were exported by air:

(i) A copy of the airway bill that must include:

(A) The weight of the peanuts, peanut meal, or peanut products exported;

(B) The consignee and shipper; and

(C) For peanut meal that is unsuitable for feed use because of contamination by aflatoxin, the statement required on the airway bill in accordance with this part: or

(ii) Other documentation that is acceptable to the marketing association.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.413 Disposal of meal contaminated by aflatoxin.

All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for non-feed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion and appropriate completion thereon the following statement showing the range and average aflatoxin content (where "_____" represents the determined values for such lot) as parts per billion (PPB):

"This shipment consists of lots of meal which contain aflatoxin ranging from "_____" to "_____" PPB and averaging "_____" PPB."

§ 1446.414 Processing additional peanuts into products.

(a) *Type of supervision*. A person, who plans to acquire additional peanuts from other handlers for processing into products for export, must register as a handler and choose a method of supervision in accordance with this section.

(b) *Physical supervision*. For purposes of this section, if physical supervision is chosen:

(1) Such supervision shall be conducted in accordance with provisions of this part; and

(2) The processor must provide a letter of credit to the marketing association as prescribed by this part which shall, to the extent practicable, be the same amount as the letter of credit that would be required in accordance with this part for an equal quantity of peanuts acquired by a handler who has entered into contracts for the purchase of additional peanuts and has chosen physical supervision.

(c) *Nonphysical supervision*. For purposes of this section, if nonphysical supervision is chosen:

(1) The processor shall:

(i) Provide a written agreement that is signed by a duly authorized person, in which the processor agrees to export additional peanuts to an eligible country in such quantities and in accordance with such procedures as are specified by this part;

(ii) Provide a letter of credit to the marketing association which shall, to the extent practicable, be the same amount as the letter of credit that would be required in accordance with this part for an equal quantity of peanuts acquired by a handler who has entered into contracts for the purchase of additional peanuts and has chosen nonphysical supervision; and

(iii) Provide to the marketing association a description of the type of product that will be processed, the type of containers, size of containers, and the standard peanut processing yield for the product.

(2) The processor shall submit proof of export to the marketing association of like kind, as determined by the marketing association, as that required by this part for exports of peanuts under nonphysical supervision.

(3) Upon verification of product yield by the marketing association, approval of the form CCC–1006, and approval of the letter of credit, a product export obligation will be established on marketing association ledgers and the processor will be notified of the quantity of product export obligation.

(4) Upon receipt of proof of export that is acceptable to the marketing association, the processor, with the concurrence of the marketing association, may reduce the letter of credit to the extent that such letter of credit exceeds the amount determined by the marketing association, in accordance with instructions issued by FSA, to be necessary to assure compliance by the processor with the provisions in this part.

(d) *Applicability of regulations.* By registering as a handler and selecting a method of supervision in accordance with this section, a processor of peanuts shall be considered to have agreed:

(1) To perform in accordance with the provisions of this part;

(2) That the provisions of this part such as access to facilities, fraud, liens against peanuts on which penalty is due, and any other provisions that apply to a handler of additional peanuts, shall apply to the processor; and

(3) That the processor shall be considered as a handler for purposes of applying the penalty provisions of this part.

(e) *Records.* A peanut processor shall maintain records that will enable the marketing association or other representative of the Secretary to determine compliance with the provisions of this section.

§ 1446.415 Prohibition on importation or reentry of contract additional peanuts.

Neither exported contract additional peanuts nor peanut products made from additional peanuts shall be imported or reentered in commercial quantities by anyone into the United States in any form. If contract additional peanuts or peanut products made from such peanuts are imported or reentered into the United States, the handler importing such peanuts or peanut products shall be liable for a penalty assessed in accordance with this part, for reentering contract additional peanuts.

§ 1446.416 Suspension of restrictions on imported peanuts.

Notwithstanding any other provision of this part, if the President issues a proclamation under Section 404(b) of the Uruguay Round Agreements Act (19 USCS § 3601(b)) expanding the quantity of peanuts subject to the in-quota rate of duty under a tariff-rate quota, or under section 22 of the Agricultural Adjustments Act (7 U.S.C. 624), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, temporarily suspending restrictions on the importation of peanuts, a handler, with the written consent of the producer and CCC, may purchase additional peanuts from any producer who, in accordance with this part, contracted with the handler to deliver additional peanuts to such handler and may use such peanuts for sale for domestic edible use without incurring any marketing penalty for failure to crush or export such peanuts. However, the maximum quantity of peanuts that may be purchased by such handler in accordance with this provision of this section is the quantity of contract additional peanuts that remains undelivered by such producer under the contract. For purposes of application of this section, a proclamation temporarily increasing the import quota shall not be considered the same as a temporary suspension of restrictions on the importation of peanuts.

[56 FR 16230, Apr. 19, 1991, as amended at 65 FR 64595, Oct. 30, 2000]

§ 1446.417 Loss of peanuts.

Should a handler suffer a loss of peanuts as a result of fire, flood or any other condition beyond the control of the handler, the portion of such loss that may be attributed to contract additional peanuts, as determined by the marketing association shall not be greater than an amount determined by

dividing the total of the contract additional peanuts acquired by the handler during the year by such handler's total peanut purchases for the year and multiplying the result by the quantity for which acceptable proof of loss has been furnished to the marketing association. Such attribution shall take into account any dispositions of peanuts that occurred prior to the loss of the peanuts for which the attribution is made.

Subpart E—Handling Contract Additional Peanuts-Physical Supervision

§ 1446.501 Accounting for contract additional peanuts acquired under physical supervision.

(a) *Commingled storage*—(1) *General*. For a handler operating under physical supervision, contract additional peanuts placed in commingled storage must be accounted for on a dollar value basis less a one time adjustment for shrinkage for each crop.

(2) *Shrinkage*. For peanuts that are graded out and accounted for:

(i) Before February 1 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 3.5 percent for Virginia-type peanuts; and

(B) 3.0 percent for all other peanuts.

(ii) After January 31 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 4.0 percent for Virginia-type peanuts; and

(B) 3.5 percent for all other peanuts.

(3) *Records*. The handler shall maintain a copy of each form FSA–1007 that was issued for any peanuts that are placed in commingled storage and that is issued for any peanuts removed from storage.

(b) *Supervised identity preserved storage*. For a handler operating under physical supervision, contract additional peanuts may be stored identity preserved and may be accounted for by disposing of the entire contents of the peanuts in each identity preserved warehouse in accordance with this part and under the supervision of a representative of the marketing association. In such case:

(1) All peanuts that are loaded into each warehouse must be inspected as farmers stock peanuts and must be loaded under the supervision of the marketing association.

(2) At the end of each day in which peanuts are placed in or removed from the warehouse, the warehouse must be sealed by a representative of the marketing association.

(3) Each warehouse seal may be removed only by a representative of the marketing association.

(4) The marketing association shall be reimbursed by the handler for all expenses of providing a representative to supervise the loading and unloading of each warehouse.

(c) *Nonsupervised identity preserved storage*—(1) *Conditions*. For a handler operating under physical supervision, contract additional peanuts may be stored identity preserved without supervision at the time of loading the peanuts into each warehouse, but only if:

(i) All peanuts that are loaded into a warehouse are inspected prior to loading into such warehouse and a form FSA–1007 prepared for each lot that is inspected;

(ii) The entire contents of each warehouse will be removed and disposed of in accordance with this part and under supervision of a representative of the marketing association; and

(iii) The peanuts are accounted for on a dollar value basis except that shrinkage, in the amounts provided for in paragraph (c)(2) of this section, will be allowed if the dollar value of the peanuts that are loaded out of each warehouse is less than the dollar value of the peanuts that were loaded into such warehouse.

(2) *Shrinkage*. For peanuts that are graded out and accounted for:

(i) Before February 1 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 3.5 percent for Virginia-type peanuts; and

(B) 3.0 percent for all other peanuts.

(ii) After January 31 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 4.0 percent for Virginia-type peanuts; and

(B) 3.5 percent for all other peanuts.

(3) *Records*. The handler shall maintain a copy of each form FSA–1007 that is issued for any peanuts that are placed in nonsupervised identity preserved storage and that is issued for any peanuts that are removed from such storage.

§ 1446.502 Physical supervision of contract additional peanuts.

(a) *Supervision*. A handler who has chosen to operate under physical supervision shall make arrangements that are satisfactory to the marketing association for representatives of the marketing association to conduct onsite supervision of domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, milling, blanching, weighing, and shipping.

(b) *Final dates for scheduling supervision*. Contract additional farmers stock peanuts shall be scheduled for supervision by the marketing association during the normal marketing period but not later than August 15 of the calendar year following the year in which the crop was grown, unless prior approval of a later date has been made by the marketing association.

(c) *Notifying the marketing association*. Before moving or processing any contract additional peanuts, the handler or an agent of the handler shall notify the marketing association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working days of advance notice to the marketing association so that supervision can be arranged.

(d) *Processing*. The identical peanuts identified at time of load-out as contract additional peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed under supervision of the marketing association as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved for crushing, exportation, or processing into peanut products to be exported. Except as otherwise authorized by the marketing association, such peanuts will be considered as having been crushed or exported only if positive lot identity has been maintained in the following manner:

(1) *Transportation*. The peanuts shall be transported from storage locations in a covered vehicle such as a truck or railroad car. The vehicle shall be sealed unless the marketing association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage*. Farmers stock peanuts shall be stored in a separate building(s) or bin(s) which can be sealed or which the marketing association otherwise determines will satisfactorily maintain lot identity. Milled peanuts shall be stored in such a manner that the marketing association, under procedures issued by CCC, may make periodic inventory verification of the contract additional lots that are shown on marketing association records as being in the storage facility. The handler shall furnish to the marketing association the name and location of the storage facilities in which the contract additional peanuts are located.

§ 1446.503 Disposition requirements under physical supervision.

(a) *Methods of disposition*. Except under the provisions of § 1446.504 of this part applicable to substitution, the identical contract additional farmers stock peanuts and milled peanuts that are shelled under supervision of the marketing association and formed into lots shall be disposed of, in accordance with the provisions of this part that are applicable to contract additional peanuts and to physical supervision, by domestic crushing or by export to an eligible country as follows:

(1) All kernels may be crushed domestically under supervision of the marketing association representative; or

(2) All kernels may be exported for crushing, if fragmented; or

(3) All kernels that meet the standards established for the domestic market under the Marketing Agreement No.146 may be exported and the remaining kernels crushed domestically under supervision of the marketing association representative; or

(4) All of the peanuts may be exported as farmers stock peanuts, provided that such peanuts meet the standards established for the domestic market under the Marketing Agreement No. 146 and are positive lot identified; or

(5) The peanuts may be exported to an eligible country as peanut products if such products are produced domestically; or

(6) The peanuts may be exported as milled or in-shell peanuts if they meet the edible export standards established for the domestic market under the Marketing Agreement No. 146; or

(7) The peanuts may be considered exported or crushed if it is determined by CCC that such peanuts have been destroyed or otherwise made unsuitable for any commercial purpose.

(b) *Peanuts diverted.* Contract additional peanuts, or peanut products made from contract additional peanuts, that are diverted to any country other than an eligible country shall not be credited in the handler's favor against the handler's obligation to crush or export such peanuts.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.504 Substitution of quota and additional peanuts.

(a) *Substitution of quota peanuts which have been exported*—(1) *Farmers stock peanuts.* With prior notification to and approval of the marketing association, farmers stock quota peanuts that have been exported from the same crop, type, quality, and area may be substituted for additional peanuts that otherwise would have to be exported in accordance with this part to avoid a penalty.

(2) *Milled peanuts.* With prior notification to and approval by the marketing association, peanuts that are milled under supervision of the marketing association may be used to replace, in domestic edible use, quota peanuts that have been exported to an eligible country from the same crop, type, area, and of the same grade as recognized by the Peanut Administrative Committee (PAC) for edible quality grades. Such grades shall be established at the time the peanuts are milled and the lot is formed unless CCC directs otherwise in writing. The quota peanuts that are exported, for which substitution is requested, must have been positive lot identified and otherwise handled as additional peanuts under the supervision of the marketing association.

(b) *Use of additional peanuts for domestic edible uses prior to substitution*—(1) *General requirements.* Additional peanuts may be used for domestic edible use with prior notification and approval of the marketing association and upon presentation to the marketing association of an irrevocable letter of credit in an amount that is determined in the same manner as such handler's initial letter of credit for the quantity of peanuts that will be substituted. Such letter of credit is in addition to the letter of credit required in accordance this part as a condition for approval of contracts for additional peanuts. Such additional letter of credit for substitution shall be issued in a form and by a bank which is acceptable to CCC.

(2) *Submitting evidence of export.* The handler subsequently shall dispose of a like amount of quota peanuts in the manner prescribed in this part for contract additional peanuts. If the quota peanuts are exported, the handler shall subsequently deliver to the marketing association satisfactory evidence that a like amount of quota peanuts of the same type and of a similar grade has been exported. Such evidence must be submitted no later than the earlier of:

(i) 30 days after the final date for export as established in accordance with this part; or

(ii) 15 days prior to the expiration of the letter of credit.

(3) *Failure to timely submit evidence of export.* If satisfactory evidence is not presented by such date determined in (b)(2) of this section, CCC may authorize the marketing association to draw against the letter of credit for the full amount of the penalty which would otherwise be due for failure to dispose of contract additional peanuts in accordance with this part.

Subpart F—Handling Contract Additional Peanuts—Nonphysical Supervision

§ 1446.601 Disposition requirements under nonphysical supervision.

(a) *Disposition requirement.* With respect to any marketing year, a handler who has selected nonphysical supervision shall account for the disposition of any contract additional peanuts acquired by such handler by providing evidence that is satisfactory to the marketing association of the quantity of peanuts by peanut type that are crushed or exported by such handler in each of the following kernel categories:

(1) SS kernels;

(2) SMK's; and

(3) AO kernels.

(b) *SS kernels.* (1) For each lot of contract additional peanuts acquired by such handler for which a deduction would have been applicable for SS kernels under the applicable price support loan schedule, deduct, from the percentage of SS kernels in such lot of peanuts, a number of percentage points equal to the maximum percentage of SS kernels that a lot of peanuts could contain without having a deduction for SS kernels under the applicable price support loan schedule and multiply the result by the total weight of the TKC content of the lot, excluding the weight of the LSK's in such lot.

(2) Determine separately, for each type of peanuts acquired by such handler, the total of the results obtained in paragraph (b)(1) of this section for all lots of contract additional peanuts acquired by such handler.

(3) For each type of peanuts acquired by such handler, multiply the result determined in paragraph (b)(2) of this section by 0.955 in order to provide an allowance for shrinkage. The result is the minimum quantity of SS kernels of peanuts of the respective type that shall be crushed or exported by such handler.

(c) *SMK and SS kernels.* (1) Determine, by type, the total of the quantity of SMK and SS kernels in the lots of contract additional peanuts acquired during the marketing year by such handler.

(2) From the total determined in paragraph (c)(1) of this section, deduct the amount determined in paragraph (b)(2) of this section.

(3) For each type of peanuts acquired by such handler, multiply the results obtained in (c)(2) of this section by 0.955. The result is the minimum combined quantity of SMK's and SS kernels (excluding the quantity of SS kernels required to be crushed or exported as determined in paragraph (b)(3) of this section) of the respective type that shall be exported or crushed by such handler.

(d) *AO kernels.* (1) Determine, by type, the total quantity of TKC in the lots of contract additional peanuts acquired during the marketing year by such handler.

(2) From the total determined in paragraph (d)(1) of this section, deduct:

(i) The amount of SS kernels determining in paragraph (b)(2) of this section; and

(ii) The combined SMK's and SS kernels determined in paragraph (c)(2) of this section.

(3) Multiply the result determined in paragraph (d)(2) of this section by 0.955. The result is the total of the AO kernels of the respective type that shall be exported or crushed by such handler.

(e) *Substitution prohibited.* Disposition credit shall not be granted:

(1) To the obligation to export or crush SS kernels and SMK for any amount of AO kernels that may have been exported or crushed in excess of the quantity required in accordance with paragraph (d)(3) of this section.

(2) To the obligation to export or crush AO kernels for any amount of SS kernels and SMK's that may have been exported or crushed in excess of the quantity required in accordance with paragraph (c)(3) of this section.

(3) To the obligation to export or crush peanuts of a type, for a surplus amount of contract additional peanuts exported or crushed from another type.

(f) *Peanuts diverted.* Contract additional peanuts or peanut products made from contract additional peanuts diverted to any country other than eligible country shall not be credited in the handler's favor against the handler's obligation to crush or export such peanuts.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.602 Disposition credit for peanuts under nonphysical supervision.

(a) *Disposition credits.* Contract additional peanuts of the same crop year and of like type shall be disposed of in accordance with the provisions of this part. Disposition shall be by domestic crushing or by export to an eligible country. Disposition credit shall, subject to the provisions of this part, be granted for:

(1) Kernels that are crushed domestically under physical supervision of the marketing association representative; or

(2) Kernels that are exported for crushing, if fragmented before being exported; or

(3) Exported kernels that meet PAC outgoing quality standards for domestic edible use; or

(4) Peanuts that are exported as farmers stock peanuts, provided that such peanuts meet PAC incoming quality standards for Segregation 1 peanuts and are positive lot identified; or

(5) Peanuts that are exported to an eligible country as peanut products if such products are produced domestically in accordance with provisions of this part; or

(6) Peanuts that are exported as milled or in-shell peanuts if they meet PAC outgoing quality standards for domestic edible peanuts; or

(7) Peanuts that are exported as blanched peanuts; or

(8) Peanuts that are determined by the marketing association as having been destroyed or otherwise made unsuitable for any commercial purpose. In such case the peanuts shall be considered as crushed.

(b) *Requesting physical supervision of crushing for disposition credit.* Prior to the disposition date for contract additional peanuts, as provided in this part, a handler operating under the provisions of this part with respect to nonphysical supervision may request and arrange for the marketing association to supervise the crushing of SMK, SS and AO peanuts for disposition credit for the applicable kernel type by obtaining physical supervision of the peanuts under the following conditions:

(1) *Milled peanuts.* A request to change to physical supervision for crushing milled peanuts for SMK, SS or AO credit may be made at any time prior to the final disposition date for additional peanuts for the relevant crop year. Physical supervision of milled peanuts shall be provided under the provisions of this part applicable to physical supervision of milled peanuts. The marketing association may require that positive identified lots be regraded before crushing.

(2) *Farmers stock peanuts.* A request to change to physical supervision for crushing farmers stock peanuts must be made and approved prior to the peanuts being graded out of commingled storage. In order to determine the categories, by peanut type, for the kernels that are crushed, namely SS, SMK and AO kernels, physical supervision must begin at the gradeout from commingled storage and continue through the crushing of the peanuts as required in accordance with this part for a handler who chooses physical supervision for disposition of contract additional farmers stock peanuts.

(c) *Determining disposition credit.* Disposition credit for SMK, SS and AO kernels crushed under physical supervision shall be determined for farmers stock peanuts from the applicable form FSA–1007, and for milled peanuts from the applicable form FV–184–9.

(d) *Application of crushing credits to disposition obligation*—(1) *Milled peanuts.* Milled peanuts that are crushed under physical supervision for disposition credit may receive credit as follows:

(i) If such peanuts meet PAC outgoing quality standards for domestic edible peanuts, disposition credit may apply pound-for-pound toward meeting the respective SMK, SS, or AO kernel obligations for the respective like peanut type and for like kernel type.

(ii) If such peanuts fail to meet PAC outgoing quality standards for domestic edible use due to aflatoxin contamination, disposition credit may apply to the SMK, SS or AO kernel obligations for the respective like peanut type and for like kernel type; except that, the percentage of such peanuts to which such credit will be allowed for each peanut type and kernel type shall not exceed the percentage of the total quantity of the respective type of peanuts that was purchased by the handler

for the marketing year as contract additional peanuts.

(iii) If such peanuts fail to meet PAC outgoing quality standards for reasons other than aflatoxin contamination, disposition credit must be applied exclusively as AO kernels.

(2) *Farmers stock peanuts.* Farmers stock peanuts that are crushed under physical supervision for disposition credit may receive credit as follows:

(i) If such peanuts meet PAC incoming quality standards for Segregation 1 peanuts, disposition credit may apply pound-for-pound toward meeting the respective SMK, SS, or AO kernel obligations for the respective like peanut type and for like kernel type.

(ii) If such peanuts fail to meet PAC incoming quality standards for Segregation 1 peanuts, disposition credit may apply to the SMK, SS or AO kernel obligations for the respective like peanut type and for like kernel type; except that, the percentage of such peanuts to which such credit will be allowed for each peanut type and kernel type shall not exceed the percentage of the total quantity of the respective type of peanuts that was purchased by the handler for the marketing year as contract additional peanuts.

(iii) If such peanuts do not meet PAC incoming quality standards for Segregation 1 peanuts for any reason other than the presence of A. flavus mold, disposition credit must be applied exclusively as AO kernels.

(3) *Adjusting export credit for average dollar value of farmers stock peanuts.* If CCC determines that the average dollar value of edible farmers stock peanuts graded out of commingled storage and crushed for export credit under the provisions of this section is less than the average dollar value of all like type peanuts purchased by the handler as contract additional peanuts, the amount of export credit for each kernel type determined under paragraph (b)(2) of this section shall be adjusted by multiplying each quantity for each kernel type by a factor to be determined by dividing:

(i) The average dollar value per ton of peanuts graded out of the handler's commingled storage, accounted for as set forth in this part, and crushed for export credit under the provisions of this section; by

(ii) The average dollar value per ton of all peanuts purchased by the handler as contract additional peanuts.

(e) *Blanching exception.* Notwithstanding any other provision of this part, a handler may receive credit for the pre-blanching weight of SS and SMK peanuts that are blanched for export if both the blanching and the crushing of the residue are conducted under supervision of agents of CCC or the marketing association. The maximum credit that may be received shall be:

(1) The quantity of SMK and SS kernels as shown on the FV–184–9 that is submitted for proof of export for such blanched peanuts;

(2) The quantity of the residue that is crushed under physical supervision; and

(3) The pre-blanched or ''redskin'' weight less the quantities in paragraphs (e)(1) and (2) of this section, to the extent of such amount that the marketing association determines is reasonable and comparable with standard industry practices.

(f) *Export credits.* In order to receive export credit toward meeting a handler's obligation to crush or export additional peanuts such exported peanuts must meet the outgoing quality standard established for the domestic market under the Marketing Agreement No. 146. Export credit will be granted in accordance with this paragraph for any exported peanuts that meet such quality standards.

(1) *Credit for exporting SMK peanuts.* Credit for exporting SMK's of the same crop year, of like type, may be earned for:

(i) The total pounds in a lot of exported peanuts which meet or exceed U.S. Standard grade for U.S. No. 1; or

(ii) The total pounds, excluding splits as determined in paragraph (f)(2)(ii) of this section, in a lot of peanuts which meet PAC standards for:

(A) Whole kernel peanuts with splits, or

(B) No. 2 Virginia peanuts; or

(iii) The total pounds determined to be SMK's in a lot of exported in-shell peanuts which meet U.S. Standard

grade for cleaned Virginia type peanuts in the shell.

(2) *Credit for exporting SS kernels.* Credits for SS kernels of the same crop year, of like type, may be earned for:

(i) The total pounds in a lot of exported peanuts which meet the U.S. Standard grade for splits; or

(ii) The total pounds, excluding SMK's as determined in paragraph (f)(1)(ii) of this section, in a lot of peanuts which meets PAC standards for:

(A) Whole kernel with splits, or

(B) No. 2 Virginia; or

(iii) The total pounds determined to be SS kernels in a lot of exported in-shell peanuts which meet U.S. Standard grade for cleaned Virginia type peanuts in the shell.

(3) *Export credits for contract additional peanuts processed into products for export.* To receive disposition credit for contract additional peanuts used in products for export, the shelled peanuts must be identified with positive lot identity tags before being moved for processing in accordance with provisions of this part. The peanuts shall be processed under supervision of the marketing association unless the processing handler selects to process such peanuts under nonphysical supervision.

(4) *Export credits for in-shell peanuts.* With respect to peanuts exported in-shell, in accordance with instructions issued by CCC, credits may be earned for SMK, SS or AO kernels on the respective portions of the TKC of the lot that are SMK, SS or AO kernels.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38330, Aug. 13, 1991]

§ 1446.603 Disposition credit for peanuts in exported products made from quota peanuts.

A handler who has selected nonphysical supervision and who manufacturers peanut products from quota peanuts may export such products to an eligible country and receive disposition credit to apply to such handler's obligation to dispose of contract additional peanuts by crushing or by exporting.

(a) *Eligible peanuts.* In order to receive such credit, the quota peanuts used in such products shall be:

(1) Of the same crop year as the crop year of the contract additional peanuts for which the obligation, to crush or export, was established.

(2) Of the same type as the contract additional peanuts to which such credit shall be applied.

(b) *Handler requirements* (1) The handler, with respect to each marketing year and each area in which such handler will apply for export credit for manufactured products, shall submit a certification to the applicable marketing association:

(i) With respect to any marketing year in which such handler intends to request disposition credit for exported products made from quota peanuts, prior to requesting such disposition credit;

(ii) On a product-by-product basis; and

(iii) Of the peanut product content of peanut products manufactured by such handler for which disposition credit will be requested.

(2) Such certification of peanut product content, as required in accordance with paragraph (b)(1) of this section, must indicate by type of peanuts, with respect to each individual product, the respective portion of such peanut kernels that are:

(i) SS kernels;

(ii) SMK's;

(iii) AO kernels.

(3) If any change is made in any peanut product formula, as certified in accordance with this section, the handler shall notify the applicable area marketing association of such change within 90 days after such change is implemented.

(c) *Disposition credit.* (1) To the extent that a handler provides satisfactory proof, to the applicable marketing association, of the export of peanut products made from quota peanuts, such handler who has complied with the provisions of paragraph (b) of this section may receive disposition credit for eligible peanuts in peanut products exported to an eligible country.

(2) Disposition credit received in accordance with paragraph (c)(1) of this section shall be prorated by type to SS kernels, SMK's and AO kernels in the same proportion as the handler certified with respect to the peanut product content in accordance with paragraph (b)(2) of this section.

(d) *Records*. Any handler who receives disposition credit under paragraph (c) of this section shall maintain records, as required in this part, to support:

(1) The accuracy of such handler's certification made in accordance with this section; and

(2) Any disposition credit that is requested by such handler in accordance with this section.

(e) *Annual review*. The marketing association or employees of TPD shall conduct an annual review of the certifications made by handlers in accordance with this section.

(f) *Inaccurate certification*. In the case of an inaccurate certification, the disposition credit shall be adjusted accordingly. Such action shall be in addition to any other remedy, including, but not limited to, any civil or criminal remedy for fraud, as may apply.

Subpart G—Penalties and Liquidated Damages

§ 1446.701 Excess marketing of quota peanuts.

A handler will be subject to a penalty for noncompliance with this part, if, as determined under this part, from any crop of peanuts, such handler markets, for domestic edible use, a larger quantity, or higher grade or quality of peanuts, than could reasonably be produced from the quantity of peanuts having the grade, kernel content, and quality of farmers stock peanuts purchased by the handler during the applicable marketing year as quota peanuts, including those peanuts purchased in accordance with the ''immediate buyback'' provisions of this part. In such case, the penalty will be an amount equal to 140 percent of the national average quota support rate for the applicable crop, times that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts marketed.

§ 1446.702 Peanuts ineligible for quota loan.

Any person who causes or permits peanuts that are not eligible peanuts to be pledged as collateral for a loan at the quota loan rate shall be considered to have agreed that:

(a) CCC may incur serious and substantial damage to its program to support the price of quota peanuts because such peanuts were pledged as collateral for a quota loan;

(b) The amount of such damages will be difficult, if not impossible, to ascertain exactly; and

(c) Such person shall, with respect to any ineligible peanuts placed under quota loan, pay to CCC, as liquidated damages and in addition to any penalty that is due, the difference between the quota loan rate for such peanuts and the additional loan rate that would apply to peanuts of the same type and quality, times the amount of such peanuts that were placed under loan. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer. Such person shall pay the damages to CCC promptly upon demand in addition to penalties as may be due or assessed. Liquidated damages under this section may be reduced by CCC based upon consideration of the following factors:

(1) Whether the person causing or permitting ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged as loan collateral;

(2) The degree of damage or potential damage to the price support program caused by the violation;

(3) The nature and circumstances of the violation;

(4) The extent of the violation; and

(5) Any other pertinent information.

§ 1446.703 Assessment of penalties against handlers.

(a) *Penalty liability*. A handler shall be subject to the penalty for a violation of any provision of this part including, but not limited to, any or all of the following violations:

(1) Failure to register as a handler of peanuts;

(2) Failure to examine and make entries on marketing card;

(3) Failure to keep or make available records as required by this part;

(4) Marketing excess quota peanuts, as set forth in this part, including any marketing of reentered contract additional peanuts or peanut products

made from contract additional peanuts or any marketing of imported peanut products made from additional peanuts purchased from the inventory of CCC loan collateral peanuts;

(5) Failure to store and account for contract additional peanuts in accordance with the requirements of this part;

(6) Failure to export or dispose of contract additional peanuts in accordance with the requirements of this part or failure to export or crush such peanuts by the final disposition date as established in this part;

(7) Failure to obtain supervision of, or to handle properly, contract additional peanuts in the manner required by this part;

(8) Reentering or importing contract additional peanuts or products made from such peanuts as prohibited by this part; or

(9) Failure to comply with any other provision of this part.

(b) *Amount of penalty*. Except when reduced in accordance with this part, the penalty amount for any violation of this part shall be equal to 140 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts:

(1) Handled by an unregistered handler;

(2) Not properly entered on the marketing card;

(3) For which records have not been properly kept or made available;

(4) Marketed as excess quota peanuts;

(5) Not properly stored;

(6) Not properly disposed of;

(7) Not properly supervised or handled in accordance with the regulations of this part;

(8) Imported as contract additional peanuts;

(9) Determined by CCC to have been necessary to produce the quantity of peanut products which have been determined to have been made from contract additional peanuts, and imported and sold in the United States; or

(10) Otherwise involved in such other violation of this part as may occur.

(c) *Notice of assessment*. A handler shall be notified in writing of the assessment of a penalty by a CCC contracting officer. Such notice shall state the basis for the assessment of the penalty, and shall advise the handler of the handler's appeal rights under this part.

(d) *Interest liability*. The person liable for payment or collection of any penalty provided for in these regulations shall be liable also for interest thereon at a rate per annum equal to the rate of interest which was charged CCC by the Treasury of the United States on the date such penalty became due. The date on which the penalty became due shall be the date on which the penalty was first assessed.

(e) *Applicability*. The provisions of this section are in addition to other remedies provided for by this part or other provisions of law.

[56 FR 16230, Apr. 19, 1991, as amended at 56 FR 38331, Aug. 13, 1991; 57 FR 27145, June 18, 1992]

§ 1446.704 Reductions of penalties.

(a) *Request for reconsideration*. A handler who is dissatisfied with a penalty that has been assessed against such handler by the CCC Contracting Officer pursuant to this part may file a written request for reconsideration or reduction of the penalty that has been assessed. Such request must be made within 15 days after the date of the notice of assessment.

(b) *Reduction of penalties*.

(1) *By CCC Contracting Officer*. To the extent permitted by the provisions of paragraph (d) of this section, the CCC Contracting Officer may reduce the amount of penalty that is otherwise determined or assessed in accordance with this part. Such reduction may be made before the penalty is assessed or may be made during the course of an appeal.

(2) *By the Executive Vice President, CCC*. To the extent permitted by the provisions of paragraph (d) of this section, the Executive Vice President, CCC, or the Executive Vice President's designee, may reduce the amount of penalty that has been assessed in accordance with this part.

(c) *Reduction criteria*. A penalty that is determined or assessed in accordance with this part may be reduced by the CCC Contracting Officer or the Executive Vice President, CCC, or the Executive Vice President's designee, if such person determines that:

(1) The violation for which the penalty was assessed was minor or inadvertent;

(2) A reduction in the amount of the penalty would not impair the effective operation of the peanut program; and

(3) The assessment of penalty was not made for failure to export contract additional peanuts.

(d) *Reduction limits.*

(1) If the reduction criteria in paragraph (c) of this section has been met, the CCC Contracting Officer or the Executive Vice President, CCC, or the Executive Vice President's designee, as applicable, may reduce the penalty by such amount as such person considers appropriate (including a full reduction of the entire penalty) after taking into account the severity of the violation and the violation history of the handler.

(2) If one of the criteria in paragraphs (c) (1) and (2) of this section has not been satisfied and the remaining criteria has been satisfied, the penalty shall not be reduced to less than an amount which is equal to 40 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts involved in the violation.

(3) There shall not be a limit on the amount by which an assessment of liquidated damages may be reduced by the CCC Contracting Officer or the Executive Vice President, CCC, or the Executive Vice President's designee.

[65 FR 64595, Oct. 30, 2000]

§ 1446.705 Appeals.

A handler may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at 7 CFR parts 11 and 780 of this title.

[65 FR 64596, Oct. 30, 2000]

§ 1446.706 Statutory liens against peanuts.

(a) *Lien on peanuts.* Until the amount of any penalty which is imposed upon a handler or other person in accordance with this part is paid, a lien shall exist in favor of the United States for the amount of the penalty. Such lien shall apply on the peanuts with respect to which such penalty is incurred and on any other peanuts purchased or otherwise acquired in the same or subsequent marketing year in which the person liable for payment of such penalty has an interest.

(b) *Debt record.* The lien specified in paragraph (a) of this section shall be considered to attach at the time the penalty is entered on the debt records which shall be maintained for this purpose by the marketing associations, unless an earlier time is prescribed by law.

(c) *List of peanut marketing penalty debts.* Each marketing association shall maintain a debt record for all handlers indicating the amounts due from each handler. This list will be available for examination upon written request to the marketing association by any interested party.

[56 FR 16230, Apr. 19, 1991. Redesignated at 65 FR 64596, Oct. 30, 2000]

§ 1446.707 Schemes and devices.

If CCC or the marketing association, with approval of the CCC, determines that a handler has knowingly adopted any scheme or device which tends to defeat the purpose of the regulations of this part or has made any fraudulent representation, or has misrepresented any fact affecting a program determination, such handler will be subject to a penalty which shall be assessed in such manner as is determined will correct for such scheme, device, fraud, or misrepresentation.

[56 FR 16230, Apr. 19, 1991. Redesignated at 65 FR 64596, Oct. 30, 2000]

Subpart H—Recordkeeping, Reporting and Paperwork Reduction

§ 1446.801 Recordkeeping and reporting requirements.

(a) *Persons required to keep records.* Any person involved in the peanut industry in any of the following capacities shall keep records for each such business:

(1) A person who dries farmers stock peanuts by artificial means for a producer;

(2) A handler;

(3) A warehouse operator;

(4) A common carrier of peanuts;

(5) A broker or dealer in peanuts;

(6) A processor of peanuts;

(7) A farmer engaged in the production of peanuts;

(8) An agent marketing peanuts for a producer or acquiring peanuts for a handler or marketing association; or

(9) A person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanuts products.

(b) *Handler records and reports of peanuts acquired.* As required by this section and in accordance with instructions issued by CCC, each handler shall keep records and make reports, with respect to each lot of farmers stock peanuts such handler acquires, as follows:

(1) *Inspected peanuts.* (i) If the Federal-State Inspection Service inspects a lot of peanuts, the handler shall complete a form FSA–1007 or such other form approved by CCC or FSA and on which the following information must be entered:

(A) The name and address of the farm operator, and the State and county codes and farm number of the farm on which the peanuts were produced, if the peanuts are marketed by the producer;

(B) The handler number if the peanuts are marketed by a handler;

(C) The buying point number assigned to identify the physical location of the buying point where the peanuts were marketed;

(D) Either the name, address and handler number of the handler, or if the peanuts are accepted for loan through the marketing association, the marketing association name, number and address;

(E) The net weight of the peanuts;

(F) The quantity of peanuts marketed as either loan quota, loan additional, commercial quota, or contract additional;

(G) The date of purchase; and

(H) The amount of any penalty, assessment or claim collected.

(ii) Handlers described in paragraph (c) of this section shall cause electronic records of the data recorded on form FSA–1007 to be generated and transmitted to FSA. The data shall be transmitted in the manner and by the time prescribed by the Director, TPD.

(2) *Noninspected peanuts.* A handler who acquires farmers stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete a form FSA–1030 or such other form approved by CCC or FSA for general use, for each lot of farmers stock peanuts acquired. The handler shall use FSA–1030–P, Handler's Report of Purchases of Noninspected Peanuts, or such other form approved by CCC or FSA for general use, to transmit the form FSA–1030 or other approved form to the State FSA committee in the State in which the handler's business is located or such other location or entity approved by CCC or FSA. The handler shall complete the form FSA–1030 or other approved form to show the following:

(i) Name and address of the seller;

(ii) Name and address of the farm operator and the State and county codes and farm number of the farm on which the peanuts were produced, if the peanuts are marketed by the producer;

(iii) The handler's name, address and registration number when the peanuts are purchased from another handler;

(iv) Type of peanuts purchased;

(v) Date of purchase;

(vi) Quantity purchased;

(vii) Method of determining the weight; and

(viii) Signature of the seller and the date the seller signed the form FSA–1030 or other approved form.

(c) *Handler certification of computer software.* Each handler who is required to coordinate records with USDA electronic records system for peanuts shall prepare and use computer software that will generate records, files, reports or other electronic information as required in accordance with paragraph (b)(1) of this section, and will transmit such records, files, reports or other electronic information in the form or format and in a timely manner as may be required by FSA or CCC. Such handler shall certify by the final date prescribed by the Director, TPD, that the handler's software meets the requirements prescribed for such software.

(d) *Handler records of resales of farmers stock peanuts.* Each handler who resells

farmers stock peanuts shall keep records of:

(1) Name and address of the buyer, and if the peanuts are sold to a handler, the buyer's handler number;

(2) Date of the sale;

(3) Type of peanuts sold; and

(4) Pounds (net weight) of peanuts sold.

(e) *Handler records of peanuts shelled or milled for a producer*. The handler shall maintain records of peanuts shelled for a producer including the following information:

(1) Date of shelling or milling;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Quantity of peanuts (farmers stock basis) shelled or milled;

(5) Quantity of shelled or milled peanuts retained by the sheller; and

(6) Quantity returned to the producer.

(f) *Handler records of peanuts dried for a producer*. The handler shall maintain records of peanuts dried for a producer including the following information:

(1) State and county codes and the farm number of the farm where the peanuts were produced;

(2) Name and address of the producer; and

(3) Quantity dried as determined by the farmers stock basis weight after drying, and the date the drying was completed.

(g) *Handler records of peanuts from which LSK's or pods are removed for a producer*. The handler shall maintain records of the peanuts from which the LSK's or pods were removed for a producer if such LSK's or pods are removed in commercial quantities or, when removed with foreign material, are recoverable in commercial quantities. The records must contain the:

(1) Date of removal;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Gross weight of:

(i) Peanuts prior to removal of LSK's or pods;

(ii) Peanuts removed as LSK's;

(iii) Peanuts removed as pods;

(iv) Foreign material removed; and

(v) Peanuts remaining after removal of foreign material and LSK's or pods;

(5) Quantity of peanuts which the person performing the service retains in the form of pods and LSK's; and

(6) Quantity of peanuts returned to the producer as:

(i) Pods;

(ii) LSK's; and

(iii) LSK's and pods.

(h) *Handler records of sales and disposal of peanuts*. Each handler shall maintain records of all sales or other disposal of peanuts. Such records shall show:

(1) The date of sale or disposal of such peanuts;

(2) The quantity of peanuts sold;

(3) The type of peanuts sold;

(4) The name of the purchaser;

(5) That the peanuts were sold either as:

(i) Farmers stock peanuts; or

(ii) Milled peanuts;

(6) That the peanuts were sold either as:

(i) Edible peanuts; or

(ii) Peanuts for crushing; and

(7) Any other information which may be required by this part.

(i) *Method of keeping records*. Each handler shall maintain the records required by this part in a manner which will enable the marketing association, CCC, FSA, and other representative of the Secretary to readily reconcile the quantities, grades and qualities of all peanuts acquired and disposed of by such a handler. Records concerning the acquisition and disposal of contract additional peanuts must also be kept in a manner that allows the marketing association, CCC, FSA, or any other representative of the Secretary to readily determine whether there has been compliance with the provisions of this part.

[56 FR 16230, Apr. 19, 1991, as amended at 65 FR 8247, Feb. 18, 2000]

§ 1446.802 Examination of records and reports.

The Executive Vice President, CCC, the Deputy Administrator, FSA, the Director, TPD, the State Executive Director and any person authorized by any one of such persons, and any auditor or agent of the Office of Inspector General is authorized to examine any records that such person has reason to

believe are relevant to any matter pertinent to the peanut poundage quota program operated pursuant to the provisions of part 729 of this title and provisions of this part. Upon request, any person required by this part to keep records shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under such person's control.

§ 1446.803 Retention of records.

Persons required to maintain records under this part shall maintain all records for a period of three years following the end of the marketing year in which the peanuts were produced. Notwithstanding the preceding sentence, records relating to contract additional peanuts for which penalties or liquidated damages have been assessed, shall be retained for 6 years following the date the assessment was made or until the conclusion of the assessment action, whichever is later and records shall be kept for such longer periods of time as may be requested in writing by CCC.

§ 1446.804 Information confidential.

All data requested and obtained by the Secretary in accordance with the provisions of this part shall be kept confidential by all employees of USDA and of the marketing association. Such data shall be released only at the discretion of the Executive Vice President, CCC, and then only to the extent that such release is not prohibited by law.

§ 1446.805 Penalty for failure to keep records and make reports.

Any person, who fails to make any report or keep any record as required under this part or who falsifies any information on any such report or record shall be subject to a penalty in accordance with § 1446.703 of this part.

§ 1446.806 Fraud by handler.

Any misrepresentation made or effectively made by a handler within or without the records or reports maintained in connection with this part shall be subject to a penalty under this part and such penalty shall be in addition to any other remedies available by law for such misrepresentation (including, but not limited to, criminal prosecution). In addition, the handler and any individual or other person involved with such misrepresentation, including employees of the handler, shall be liable to CCC for all costs which CCC incurs as a result of such misrepresentation, together with interest at the per annum rate which the Treasurer of the United States charged CCC on the date the misrepresentation was made.

§ 1446.807 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 1446) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560–0006, 0560–0014 and 0560–0133.

[56 FR 38331, Aug. 13, 1991]

PART 1447—2000 PEANUT MARKETING ASSISTANCE PROGRAM

Subpart A—General Provisions

Sec.

1447.101 Applicability.
1447.102 Administration.
1447.103 Definitions.
1447.104 Producer eligibility.
1447.105 Time for filing application.
1447.106 Payment rate.
1447.107 Calculation of payment.
1447.108 [Reserved]
1447.109 Assignment of payments.
1447.110 Miscellaneous provisions.

AUTHORITY: Pub. L. 106–78, 113 Stat 1135; Sec. 204(a), Pub. L. 106–224; 15 U.S.C. 714b, 714c.

SOURCE: 65 FR 7958, Feb. 16, 2000, unless otherwise noted.

Subpart A—General Provisions

§ 1447.101 Applicability.

This part sets out provisions related to the 2000 crop of peanuts as authorized and in accordance with the applicable provisions of Public Law 106–224, the Agricultural Risk Protection Act of 2000 (the 2000 Act). Under section 204(a) of the 2000 Act, the Secretary of Agriculture is required to make certain

payments available to eligible producers of 2000-crop quota and additional peanuts.

[65 FR 65718, Nov. 2, 2000]

§ 1447.102 Administration.

(a) *Responsibility*. The Farm Service Agency (FSA), will administer this part under the general direction and supervision of the Administrator, FSA, or the Executive Vice President, Commodity Credit Corporation (CCC), as applicable. In the field, these regulations shall be carried out by State and county Farm Service Agency committees.

(b) *Limitation of authority*. A State or county committee or its employees or representatives, or any marketing association or its employees or representatives, may not modify or waive any of the provisions of this part or any amendment or supplement to it.

(c) *Supervisory authority*. Delegation of authority contained in this part shall not preclude the Administrator, FSA, the Executive Vice President, CCC, or a designee of such person from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation.

§ 1447.103 Definitions.

For purposes of this part, the definitions and provisions of parts 718, 719, 729, 780, 790, 791, 793, 1402, 1403, 1407, 1421, 1422, 1446 and 1498 of this title are incorporated and shall apply except where the context or subject matter or provisions of the regulations in this part otherwise requires or provides. References contained in this subpart to other parts of this chapter or title include any subsequent amendments to those referenced parts. Unless the context indicates otherwise, any reference to the Executive Vice President of CCC shall also be read to mean any persons designated by the Executive Vice President. The definitions in this section shall be applicable for all purposes of administering the 1999 Peanut Marketing Assistance Program. Unless the context or subject matter otherwise requires, the following words and phrases as used in this part and in all related instructions and documents shall have the following meanings:

CCC means the Commodity Credit Corporation, an agency and instrumentality of the United States within the United States Department of Agriculture.

County committee means the local FSA county committee.

Crop year means the calendar year in which a crop is planted.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

FSA means the Farm Service Agency, United States Department of Agriculture.

Planted acres means land in which seed has been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the area as determined by the county committee.

Producer means a producer as defined in part 718 of this title.

Secretary means the Secretary of the United States Department of Agriculture.

Total production means, for purposes of calculating assistance payments under this part, the total production eligible for payment, calculated as the sum of acres planted times the established farm yield or highest actual yield for the current crop year or the previous 3 crop years, whichever is greater.

United States means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

USDA means the United States Department of Agriculture.

§ 1447.104 Producer eligibility.

(a) Producers of quota and/or additional peanuts in the United States will be eligible to receive benefits under this part provided their share in the planted acreage of such peanuts is greater than zero.

(b) Payments may be made to an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs

the Peanut Marketing Assistance Program Payment Application and Summary (FSA–1043). Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment

§ 1447.105 Time for filing application.

(a) Applications for benefits under this part must be filed on or after October 2, 2000, but not later than the close of business on February 1, 2001, in the county FSA office serving the county where the producer's farm is located for administrative purposes.

(b) The Deputy Administrator may grant general exceptions to these deadlines for filing applications.

[65 FR 7958, Feb. 16, 2000, as amended at 65 FR 65718, Nov. 2, 2000]

§ 1447.106 Payment rate.

(a) *Payment rate for quota peanut production.* The payment rate for quota peanuts under this part is $30.50 per ton.

(b) *Payment rate for additional peanut production.* The payment rate for additional peanuts under this part is $16.00 per ton.

[65 FR 65718, Nov. 2, 2000]

§ 1447.107 Calculation of payment.

(a) *Calculating producer's share of peanuts produced or considered produced on a farm.* The amount of peanuts produced or considered produced by a producer on a farm, for which the producer's share in the acreage planted to peanuts is greater than zero, is the product of:

(1) The number of acres planted to peanuts on the farm, times

(2) The producer's percent share in the acres planted, times

(3) The highest yield from the following choices:

(i) The established farm yield,

(ii) The actual yield for any of the 1997, 1998 or 1999 crop years,

(iii) The actual yield for the 2000 crop year.

(b) *Determination of quota or additional peanut payment rate.* A producer's eligibility for payments at the quota rate and at the additional rate will be computed separately. A producer, within the quantity limit determined under paragraph (a) of this section, may claim payments at the quota payment rate to the extent that it is determined that the producer used a quota to market the peanuts or was prevented from doing so because of conditions beyond the producer's control. The producer's eligibility shall, otherwise, be only at the additional peanut payment rate.

(c) *Calculating producer's total assistance payment*—(1) *Assistance payment for quota peanuts.* A producer's assistance payment for quota peanuts is the product of the assistance rate for quota peanuts set forth in § 1447.106(a) times the sum of the amount of quota pounds eligible for payment for each farm as determined under paragraphs (a) and (b) of this section.

(2) *Assistance payment for additional peanuts.* A producer's assistance payment for additional peanuts is the product of the assistance rate for additional peanuts set forth in § 1447.106(b) times the sum of the amount of additional pounds eligible for payment for each farm as determined in paragraphs (a) and (b) of this section.

[65 FR 7958, Feb. 16, 2000, as amended at 65 FR 65718, Nov. 2, 2000]

§ 1447.108 [Reserved]

§ 1447.109 Assignment of payments.

Payments made under this part may be assigned in accordance with the provisions of part 1404 of this chapter.

§ 1447.110 Miscellaneous provisions.

(a) A person may be denied payments under this part if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(b) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance

arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(c) Producers shall be required to pay interest on any refund required of the producer receiving assistance or a payment if CCC determines that payments or other assistance were provided to the producer and the producer was not eligible for such assistance. The interest rate shall be 1 percent greater than the rate of interest that the United States Treasury charges CCC for funds, as of the date of payment. Interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date repayment is completed. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any error by, or fault of, the producer.

(d) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(e) In the event that any request for assistance or payment under this part was established as result of erroneous information or a miscalculation, the assistance or payment shall be re-computed and any excess refunded with applicable interest.

(f) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(g) Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the regulations set forth at parts 11 and 780 of this title.

(h) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program

Sec.
1464.1 Administration.
1464.2 Availability of price support.
1464.3 Level of price support.
1464.4 Deductions from advances.
1464.5 Interest rate and general provisions.
1464.6 Maturity date.
1464.7 Eligible producer.
1464.8 Eligible tobacco.
1464.9 Refund of price support advance.
1464.10 No net cost tobacco fund or account.
1464.11 Nonrefundable marketing assessment.
1464.12 Flue-cured (types 11–14) tobacco.
1464.13 Fire-cured (type 21) tobacco.
1464.14 Fire-cured (types 22–23) tobacco.
1464.15 Dark air-cured (types 35–36) tobacco.
1464.16 Virginia sun-cured (type 37) tobacco.
1464.17 Cigar-filler and binder (types 42–44 and 53–55) tobacco.
1464.18 Cigar-filler (type 46) tobacco.
1464.19 Burley (type 31) tobacco.
1464.20–1464.23 [Reserved]
1464.24 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Subpart B—Importer Assessments

1464.101 Definitions.
1464.102 Budget deficit marketing assessment.
1464.103 Importer no-net-cost assessments.
1464.104 Remittance of importer assessments.
1464.105 Refund of assessments.
1464.106 Marketing penalties.
1464.107 Recordkeeping.
1464.108 Reconsideration and appeal.

Subpart C—Tobacco Loss Assistance Program 1999

1464.201 Applicability and basic terms for payments to states.
1464.202 Administration.
1464.203 Eligibility.
1464.204 Appeals.
1464.205 Alternate distribution.

Subpart D—Tobacco Disaster Assistance Program

1464.300 [Reserved]

1464.301 Applicability and basic terms for payments.
1464.302 Administration.
1464.303 Definitions.
1464.304 Loss requirements.
1464.305 Signup.
1464.306 Proof of loss.
1464.307 Benefits.
1464.308 [Reserved]
1464.309 Offsets and assignments.
1464.310 Misrepresentation and scheme or device.
1464.311 Refunds to CCC.
1464.312 Cumulative liability.
1464.313 Estate, trusts, and minors.
1464.314 Death, incompetence, or disappearance.
1464.315 Appeals.

Subpart E—Tobacco Loss Assistance Program 2000

1464.401 Applicability and basic terms for payments.
1464.402 Administration.
1464.403 Eligibility.
1464.404 Definitions.
1464.405 Sign up.
1464.406 [Reserved]
1464.407 Payment benefits.
1464.408 Offsets and assignments.
1464.409 Misrepresentation and scheme or device.
1464.410 Refunds to CCC.
1464.411 Cumulative liability.
1464.412 Estates, trusts, and minors.
1464.413 Death, incompetence, or disappearance.
1464.414 Appeals.

APPENDIX A TO PART 1464—IMPORTER ENTRY AND ASSESSMENT WORKSHEET

AUTHORITY: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1; 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, 113 and 224; Sec. 204(b), Pub. L. 106–224.

Subpart A—Tobacco Loan Program

SOURCE: 45 FR 9253, Feb. 12, 1980, unless otherwise noted.

§ 1464.1 Administration.

(a) This program will be administered by the Tobacco and Peanuts Division, FSA, under the general direction and supervision of the Executive Vice President, CCC. The program will be carried out by cooperative marketing associations (hereinafter referred to as ''associations'') acting on behalf of their producer members. To obtain a price support loan, an association must enter into a loan agreement with CCC. The loan agreement will set forth terms and conditions for making price support available to producers. To the extent provided in the loan agreement, an association shall meet the eligibility requirements for price support prescribed in the Cooperative Marketing Associations Eligibility Requirements for Price Support (part 1425 of this chapter), as amended. CCC reserves the right to restrict the number of associations with which it will contract. In so doing, CCC will select such associations as it deems necessary or desirable to effectuate the purposes of the program with a maximum of efficiency and economy of operations. The names of such associations may be obtained from the Tobacco and Peanuts Division, FSA, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

(b) Each year CCC will make loans to associations. The associations in turn will make price support advances available to eligible producers either directly or through auction warehouses. The tobacco on which producers receive price support advances will serve as security for the loans. Loans made to associations will include not only the initial loan value of the tobacco, but also amounts to cover costs of receiving, processing, storing, and selling the loan tobacco, including that part of overhead costs not borne by the association pursuant to § 1464.4. Associations will be authorized to enter into contracts for these services through the usual trade channels. Loans also may include amounts to cover any Federal and State income taxes which the associations are required by the Internal Revenue Service or State governmental body to pay on income received from the sale of loan tobacco.

[45 FR 9253, Feb. 12, 1980, as amended at 47 FR 51555, Nov. 16, 1982; 48 FR 21110, May 11, 1983]

§ 1464.2 Availability of price support.

(a) *Kind of tobacco*. Price support will be available to eligible producers on the following kinds of eligible tobacco subject to conditions listed in §§ 1464.7 and 1464.8 respectively.

Flue-cured tobacco, types 11, 12, 13, and 14.

Kentucky-Tennessee Fire-cured tobacco, types 22 and 23.
Virginia Fire-cured tobacco, type 21.
Virginia Sun-cured tobacco, type 37.
Dark Air-Cured tobacco, types 35 and 36.
Burley tobacco, type 31.
Cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55.

(b) *Method of providing price support*—(1) *Through auction warehouses*. (i) Price support will be available for each lot of eligible tobacco offered for sale at auction warehouses which have contracted with an association, on a form of agreement approved by CCC, to make price support advances to producers on behalf of the association. Producers will deliver their tobacco to auction warehouses which will display the tobacco and offer it for sale at auction. Each contract between an association and an auction warehouse will require the auction warehouse to see that producers are informed that price support advances are available for each lot of eligible tobacco offered for sale at auction when the final bid is less than the price support rate available for the grade of eligible tobacco comprising such lot. For Flue-cured and Burley tobacco, the associations' contracts with auction warehouses will also require the auction warehouses to mark any tobacco sale bill ''No Price Support'' if the marketing of the pounds of tobacco covered by such bill will result in the producer marketing in excess of 103 percent of the producer's effective farm marketing quota. Producers will receive price support advances from the warehouse operator for any tobacco to be consigned by the warehouse operator to the association. Price support advances will be paid to the producer at the time the warehouse operator settles with the producer for the entire quantity of the producer's tobacco that has been displayed for inspection and offered for sale on any one day's auction market. The warehouse operator will be reimbursed by the association with funds borrowed from CCC.

(ii) Price support will be available only at warehouses where tobacco inspection service is provided by the Agricultural Marketing Service, USDA. Inspection and price support services may be extended to new markets or to additional sales on established markets in accordance with this part and Subpart A of part 29 of this title which provides for formal public hearings prior to extending of additional services.

(iii) CCC reserves the right to direct the association to withhold a contract under the price support program from any auction warehouse for one or more years if, based on previous performance of similar contracts, or other evidence, there is substantial reason to believe that such warehouse will not fulfill its contract obligations.

(2) *Special requirements for flue-cured tobacco*. Price support will be available only on flue-cured tobacco which has been designated for sale at specific warehouses by the producer under the following conditions:

(i) *Definition*. *Producer* as used in this paragraph means the person who was issued the tobacco marketing card pursuant to part 723 of this title.

(ii) *Producer designation of warehouses*. Producers will be required, as a condition of price support, to designate the warehouses at which they will market their tobacco. Such designations may be at any warehouse or warehouses in any market within a radius of 100 miles from the county seat of the county in which the farm is located, or if such farm is physically within two counties, then from the county seat of the county in which the county FSA office administering that farm is located. To the extent there are less than eight markets within such radius, any warehouse or warehouses in any of the eight markets nearest to the county seat may be designated. A producer may obtain price support only in a warehouse which the producer has designated, and at each such warehouse only with respect to the quantity of tobacco designated for sale at such warehouse.

(iii) *When producer designations shall be made*. Producers must designate the warehouse(s) at which they will market their tobacco during a period which shall be announced beforehand by the local county FSA office. The period for making designations shall be before May 31 each year. Producers who lease quota or whose farm is reconstituted (the combining or dividing of a farm due to a change in operation) after such period may designate the warehouse(s) at which their tobacco will be

marketed according to procedures to be established by the Deputy Administrator, State and County Operations, FSA. Producers who have designated warehouses which cease to operate or cease to have tobacco inspection or price support available may change their designations at any time after such occurrences. Producers who have designated warehouses whose inspection services have been temporarily suspended for any reason for the equivalent of at least one sales day may change their designation at any time after such occurrences. Redesignation (changes in warehouse(s) designated or in pounds designated to a warehouse) or designations for farms which have not previously designated tobacco may be made by producers during the five business days ending on the first Friday of each month during the flue-cured tobacco marketing season. Such redesignation or initial designation shall be made on any one day of each redesignation period. Such redesignation or initial designation shall be effective on the second Monday following the Friday on which the redesignation period ends.

(iv) *Form and content of designations.* A designation shall be made for each warehouse at which a producer desires to market tobacco by executing a form provided by the county FSA office. The producer will be required to indicate on such form the name of the warehouse or warehouses designated by the producer and the pounds of flue-cured tobacco the producer desires to sell at such warehouse as well as any other information required to be stated on such form.

(v) *Entering warehouse designation information.* The warehouse code number of the warehouse the producer has designated will be indicated on the farm marketing card. If an effective date is determined in accordance with paragraph (b)(2)(iii) of this section, such effective date will be shown on the farm marketing card. If the producer has not designated a warehouse, a warehouse code will not be shown on the marketing card. Changes in designation by the producer shall be accomplished by the producer returning the marketing card to the county FSA office and requesting the transfer of any unmarketed pounds of flue-cured tobacco shown on any marketing card to another eligible warehouse or warehouses.

(vi) *Use of warehouse designation information.* (A) A separate sale bill marked ''no price support'' shall be prepared for that quantity of tobacco weighted in that is in excess of the balance of the pounds designated as shown on the marketing card:

(B) The warehouse shall mark ''no price support'' on a sale bill for any tobacco which is presented for sale and which is accompanied by a marketing card which does not show a warehouse code, which shows a code of another warehouse, or which shows an effective date which is later than the date on which the tobacco is presented for sale.

(vii) *Availability of designation information.* Each county FSA office shall send all designations received to the Flue-Cured Tobacco Cooperative Stabilization Corporation, Raleigh, North Carolina, following each designation period and each period for changing designations. That association shall inform the Flue-Cured Tobacco Advisory Committee of the pounds designated to each warehouse and the pounds of any undesignated tobacco which, for the purpose of recommending opening dates and selling schedules in accordance with part 29 of this title, is available for apportioning for sale at each warehouse. That association also shall furnish each warehouse the name and address of the producers who designated the warehouse, the pounds each designated and the pounds which represented 103 percent of the marketing quota of each such producer.

(viii) *Failure to comply with opening date and selling schedule by warehouses.* Warehousemen shall comply with opening date and selling schedule requirements as provided in 7 CFR 29.9406.

(3) *Upon direct delivery to the Association.* Eligible producers in nonauction market areas may deliver eligible tobacco to central receiving points designated by the appropriate association.

(4) *Period of price support.* Price support will be available to eligible producers on eligible tobacco only during each year's normal marketing season for each kind of tobacco for which support is provided.

(5) Beginning with the 1981 crop, eligible producers may obtain price support on untied burley tobacco packed in bales subject to the following conditions:

(i) The quality and condition of the tobacco contained in each bale delivered for price support as a single lot will be representative of the quality and condition of the tobacco contained in all other such bales of the same lot.

(ii) The tobacco in each bale will be stalk-cured.

(iii) The bales will not contain foreign matter or conceal inferior tobacco.

(iv) Specification of bales:

(A) Bales must be approximately 1×2×3 feet in size.

(B) The leaves in bales must be untied and oriented.

(C) The basket ticket shall show the number of bales in the lot. Each bale in the lot shall be identified by a uniform identification tag 1⅝ inches wide by 3¼ inches long which shall be attached securely to the bale and shall show at least the following information: (*1*) Warehouse registration number, (*2*) basket ticket identification number, and (*3*) bale number.

[45 FR 9253, Feb. 12, 1980; 45 FR 26687, Apr. 21, 1980, as amended at 45 FR 68914, Oct. 17 1980; 46 FR 48901, Oct. 5, 1981; 47 FR 28607, July 1, 1982; 47 FR 44542, Oct. 8, 1982; 48 FR 28425, June 22, 1983; 51 FR 32426, Sept. 12, 1986; 56 FR 21259, May 8, 1991; 62 FR 3198, Jan. 22, 1997]

§ 1464.3 Level of price support.

(a) The level of price support for eligible tobacco shall be determined in accordance with section 106 of the Agricultural Act of 1949, as amended.

(b) Flue-Cured tobacco of varieties Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, and Dixie Bright 244, or a mixture or strain of such seed varieties or any breeding line of Flue-Cured tobacco seed varieties, including, but not limited to, 187 Golden Wilt (also designated by such names as No-Name, XYZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244 will be supported at one-half the support rate, plus 50 cents per hundred pounds, for comparable grades of acceptable varieties.

[51 FR 32426, Sept. 12, 1986]

§ 1464.4 Deductions from advances.

(a) There may be deducted from price support advances paid to tobacco producers amounts to help defray administrative overhead costs incurred by producers associations through which price support is made available to tobacco producers.

(b) If any producer on a farm is indebted to the United States and such indebtedness is listed on the Claim Control Record, Form ASCS–604, the Government will effect collection of the amount of the indebtedness by setoff from the amount of price support advance due the producer in the following manner: Any marketing card covering tobacco eligible for price support issued for such farm in accordance with the applicable regulations issued by the Secretary of Agriculture with respect to marketing quotas (parts 723 of this title) will bear a notation showing the indebtedness, the name of the debtor and the amount of the indebtedness. The acceptance and use of a marketing card bearing a notation of indebtedness to the United States by a producer named as debtor on such card will constitute an authorization by such producer to any tobacco warehouse operator or association to pay the United States the price support advance due the producer to the extent of their indebtedness set forth on such card but not to exceed that portion of the price support advance remaining after deduction of usual warehouse and authorized price support charges and amounts due prior lienholders. The acceptance and use of a marketing card bearing a notation and information of indebtedness to the United States will not constitute a waiver of any right of the producer to contest the validity of such indebtedness by appropriate administrative appeal or legal action.

[45 FR 9253, Feb. 12, 1980, as amended at 47 FR 28608, July 1, 1982; 56 FR 21259, May 8, 1991]

§ 1464.5 Interest rate and general provisions.

The loans made to the associations will bear interest at the rate announced by CCC and will be nonrecourse both as to principal and interest except in the case of misrepresentation, fraud or failure to carry out the loan agreement. Tobacco loses its identity as to original ownership through commingling in the packing process, and individual producers may not redeem their tobacco once it has been pledged as security for the loan. Associations will sell the loan tobacco as provided in the loan agreements for each crop, and the net proceeds of sales of the loan collateral of each crop will be applied to the loan account for such crop until the loan is repaid in full. With respect to the 1981 and prior crops, if the proceeds from the sale of loan collateral of the 1981 or any prior crop exceed (a) the amount of the loan plus all fees, handling charges, operating costs and interest; and (b) any amount due CCC under a barter transfer agreement entered into between CCC and the association, such excess shall constitute ''net gains'' and shall be distributed in cash by the association to the producers who placed the tobacco under loan unless other disposition is approved by CCC.

[45 FR 9253, Feb. 12, 1980, as amended at 50 FR 7574, Feb. 25, 1985; 51 FR 32426, Sept. 12, 1986; 56 FR 21259, May 8, 1991]

§ 1464.6 Maturity date.

Loans made under the program will mature on demand.

§ 1464.7 Eligible producer.

To qualify as an eligible producer for purposes of receiving price support during the current marketing year a person must have eligible tobacco, as provided in § 1464.8, for marketing and such person:

(a) Must have agreed to make contributions to a No Net Cost Fund or pay assessments to a No Net Cost Account, as applicable, in accordance with § 1464.10.

(b) Must not have been found, after notice and opportunity for an administrative hearing in accordance with part 780 of this title, to have:

(1) Knowingly delivered nested tobacco for the purpose of receiving price support.

(2) Filed a false report with respect to the use of pesticides on tobacco produced for marketing during the current marketing year.

(3) Erroneously represented any fact affecting a tobacco program determination.

(4) Adopted any scheme or device which tends to defeat the purpose of the tobacco program.

(5) Made any fraudulent representations with respect to the tobacco program.

(c) Must be in compliance with the provisions of part 12 of this title.

(d) Must not be ineligible, in accordance with part 1498 of this title, to receive price support payments, loans, and benefits.

(e) With respect to any tobacco which is presented for price support, must have retained beneficial interest in the tobacco prior to presenting the tobacco for such loan.

(1) For purposes of this section, the producer will be considered to have retained beneficial interest in the tobacco only if such producer has complete control of and title to such tobacco, including the right to tender such tobacco to CCC for a price support loan on the date such tobacco is tendered to CCC for a price support loan, and has maintained this right and that interest in the tobacco at all times prior to presenting the tobacco for the loan.

(2) If a producer receives a monetary advance or other consideration in connection with or for such tobacco, the producer will be deemed for purposes of this section to have lost beneficial interest in such tobacco unless the producer has a written agreement with the person who provides the advance payment or consideration and such agreement accurately and fully:

(i) Sets forth the amount, nature and date of the advance or consideration;

(ii) Sets forth the poundage on which the advance or consideration was made;

(iii) Provides that the tobacco will be sold at a producer auction through an

auction warehouse at which price support is provided, or will be presented for a price support loan;

(iv) Provides that as a full and final settlement on the tobacco, the full sales price at the producer auction or the full loan proceeds will be paid to the producer minus only the following:

(A) Any advance set out in the agreement; and

(B) Standard published assessments or charges for services rendered at standard published rates that apply to all tobacco of all producers, including tobacco for which no advance has been paid;

(v) Sets forth the date of final settlement to be made on the tobacco which date can be no later than the date applicable to tobacco on which no advance has been made.

(vi) States that the full profit and beneficial interest in the tobacco, and full control of the tobacco, remains with the producer and provides that the full profit and beneficial interest will remain with the producer at all times prior to any disposition of the tobacco as producer tobacco, or at a producer auction, or presenting for a price support loan.

(3) A producer will be considered to have lost beneficial interest in tobacco and thereby not be an ''eligible producer'' for such tobacco as of the date any advance or other preauction arrangement was made if CCC determines for that tobacco that:

(i) The advance per pound equalled or exceeded the producer's final net proceeds per pound on all tobacco marketed from the farm for that marketing year at producer auctions, including any tobacco on which an advance is made or the pledging of tobacco for price support loans;

(ii) A written agreement was required by paragraph (e)(2) of this section, but none has been executed; or

(iii) A written agreement was executed but did not meet the requirements of paragraph (e)(2) of this section.

(4) If tobacco is pledged for a price support loan and the producer is not then or thereafter deemed to be or to have been an eligible producer for that tobacco for purposes of placing the tobacco under such loan, then the tobacco shall be considered to have a loan value of zero. The producer and the person that took possession of the tobacco from the producer, or paid an advance, or marketed the tobacco, or disposed of the tobacco as producer tobacco, shall be jointly and severally liable with the producer for returning any loan proceeds previously paid in the name of, or for the account of, the producer. Further, the disposition of any tobacco as producer tobacco where the producer is not then or thereafter considered to have been an eligible producer with respect to such tobacco may be the subject of penalties on the grounds of false identification, excess marketings, or otherwise as provided in part 723 of this title. These remedies are in addition to any others as may apply.

(f) Must be in compliance with the provisions of parts 400 and 402 of this title by purchasing an amount of catastrophic insurance coverage which equals or exceeds the minimal required under those parts.

[51 FR 32426, Sept. 12, 1986, as amended at 53 FR 43675, Oct. 28, 1988; 56 FR 21259, May 8, 1991; 57 FR 43583, Sept. 21, 1992; 60 FR 21037, May 1, 1995]

§ 1464.8 Eligible tobacco.

Eligible tobacco for the purpose of pledging such tobacco as collateral for a price support loan is any tobacco of a kind for which price support is available, as provided in § 1464.2, that is in sound and merchantable condition, is not nested as defined in 7 CFR part 29, and:

(a) Is not a kind of tobacco for which marketing quotas are not in effect for the marketing year because marketing quotas have been disapproved in a referendum of producers;

(b) Is offered for marketing by the person who was the producer of the tobacco, or in the case of a deceased producer, by the duly authorized successor(s) in interest;

(c) Is offered for marketing in accordance with § 1464.2(b);

(d) If marketing quotas are in effect for the kind of tobacco:

(1) Except for burley tobacco, the farm operator has filed a report of the acreage planted to tobacco on the farm

in the applicable year in accordance with part 718 of this title.

(2) The tobacco was produced on a farm on which neither the reported nor determined acreage of the kind of tobacco exceeds any acreage allotment established for the farm in accordance with the applicable part 723 of this title for the kind of tobacco for the applicable year.

(3) Is identified when delivered to the association either directly or through an auction warehouse with a single marketing card for each lot of tobacco.

(e) If marketing quotas are in effect for the kind of tobacco or if marketing quotas are not in effect but would have been in effect for the kind of tobacco had such marketing quotas not been terminated by the Secretary, the operator of the farm on which the tobacco was produced:

(1) Has certified that all tobacco delivered from such farm for price support will not have not been nested as defined in part 29 of this title.

(2) Has certified to the county ASC committee on a form approved by the Deputy Administrator that all pesticides (including plant regulators, defoliants, and desiccants), as defined in 40 CFR 162.3, which were used in connection with the production of the tobacco have been approved by the Environmental Protection Agency for use on tobacco and any such pesticides that were used were applied in accordance with label directions.

(3) Has not refused to permit the sampling of such tobacco, either on the farm or where stored, for chemical analysis for the purpose of verifying the accuracy of any pesticide certification.

(f) With respect to burley and flue-cured tobacco only, is a quantity of tobacco which when added to the pounds of the respective kind of tobacco previously marketed from the farm during the marketing year does not exceed 103 percent of the effective farm marketing quota established for the respective kind of tobacco for that year.

(g) With respect to flue-cured tobacco only, is a quantity of tobacco which was delivered to the association through an auction warehouse and is a quantity which when added to the pounds of flue-cured tobacco previously marketed from the farm at that warehouse does not exceed the quantity of flue-cured tobacco designated by the farm operator for marketing at that warehouse.

(h) Any tobacco with respect to which the producer is not an eligible producer under the provisions of § 1464.7 shall not be eligible for a price support loan and in any case in which the producer is deemed to have ceased to have retained the status of an eligible producer due to an advance or other preauction arrangement, the producer's marketing card shall not be used to market such tobacco except to reflect a nonauction marketing to the person who paid an advance to the producer or took possession of the tobacco from the producer.

[51 FR 32426, Sept. 12, 1986, as amended at 56 FR 21259, May 8, 1991; 57 FR 43584, Sept. 21, 1992; 61 FR 33304, June 27, 1996; 62 FR 3198, Jan. 22, 1997]

§ 1464.9 Refund of price support advance.

In any case in which a producer has received price support on a lot of tobacco such producer shall refund to CCC any price support advance received with respect to such lot of tobacco if it is determined, after notice and opportunity for an administrative hearing in accordance with part 780 of this title, that such producer:

(a) Received a price support advance on tobacco that was nested, as defined in part 29 of this title or otherwise not eligible for price support. The county committee, with concurrence of a State Committee Representative, may reduce the refund with respect to tobacco otherwise required in this part, in accordance with guidelines issued by the Deputy Administrator.

(b) Filed a false report with respect to the use of pesticides on tobacco produced on the farm from which such lot of tobacco was identified, at the time of marketing, as having been produced.

(c) Misrepresented any fact affecting a tobacco program determination, adopted any scheme or device which tends to defeat the purpose of the tobacco program, or made any fraudulent representation which tends to defeat the purpose of the tobacco program.

The refund of CCC price support advance shall apply to all payments on all farms received by such producer.

[51 FR 32427, Sept. 12, 1986, as amended at 56 FR 21259, May 8, 1991; 61 FR 33304, June 27, 1996]

§ 1464.10 No net cost tobacco fund or account.

(a) *Definitions.* As used in this part and in all instructions, forms, and documents in connection therewith, the following terms shall have the meanings herein assigned to them.

(1) *Account* means an account established within the CCC for an association, which account shall be known as the ''No Net Cost Tobacco Account.''

(2) *Area* when used in connection with an association, means the general geographical area in which farms of the producer-members of such association are located, as determined by the Secretary.

(3) *Association* means a producer-owned cooperative marketing association which has entered into a loan agreement with CCC to make price support available to producers of tobacco.

(4) *CCC* means the Commodity Credit Corporation.

(5) *Fund* means the capital account to be established within each association, which account shall be known as the ''No Net Cost Tobacco Fund''.

(6) *Net gains* means the amount by which total proceeds obtained from the sale by an association of a crop of quota tobacco pledged to CCC for a price support loan exceeds the principal amount of the price support loan made by CCC to the association on such crop, plus interest and charges.

(7) *Quota tobacco* means any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers.

(8) *To market* means to dispose of quota tobacco by voluntary or involuntary sale, barter, exchange, gift between living persons, or consigning the tobacco to an association for a price support advance.

(9) *Purchaser* means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, burley or flue-cured tobacco from the producer, or, with respect to the 1986 and subsequent crops of such tobacco, from an association.

(b) *Establishing a No Net Cost Tobacco Fund.* Except as provided in paragraph (c) of this section, each association shall establish and maintain a Fund in accordance with the requirements of section 106A of the Agricultural Act of 1949, as amended.

(c) *Establishing a No Net Cost Tobacco Account.* Upon request of any association, an Account shall be establish and maintained for such association in lieu of a Fund. Also, after consultation with an association, the Secretary may established and maintain an Account for such association in lieu of a Fund if the Secretary determines that the accumulation of the Fund for such association is, and is likely to remain, inadequate to reimburse CCC for net losses which CCC may sustain under its loan agreement with such association. The requirements of section 106B of the Agricultural Act of 1949, as amended, shall be applicable with respect to an Account.

(d) *Producer contributions or assessments.* As a condition of eligibility for price support during the applicable marketing year a producer of quota tobacco shall agree to make contributions to the Fund established for the association serving the area for the kind of tobacco to be marketed by such producer during such marketing year, or, if a Fund has not been established for such association, pay assessments to the Account established for such association. The amount of any contribution or assessment shall be determined in accordance with sections 106A and 106B of the Agricultural Act of 1949, as amended.

(e) *Filing of agreement.* Any agreement to make contributions to a Fund or pay assessments to an Account shall be on a form approved by the Deputy Administrator and shall be filed with the local county ASC committee prior to the issuance of a marketing card for use in identifying tobacco to be marketed from the farm of the kind of tobacco for which such agreement is applicable.

(f) *Responsibility of farm operator.* The farm operator shall determine whether all producers on the farm agree to

make contributions to the Fund or pay assessments to the Account, as applicable, that has been established for the association serving the area and may sign on their behalf an agreement which acknowledges that such persons will make such contibutions or pay such assessments.

(g) [Reserved]

(h) *Purchaser assessments.* Each purchaser of burley and flue-cured quota tobacco shall pay an assessment with respect to purchases of all such kind of tobacco marketed by a producer from a farm, including purchases from the association of such tobacco from the 1986 and subsequent crops. Such assessment shall be determined in accordance with section 106A or 106B, as applicable, of the Agricultural Act of 1949, as amended, and shall be paid into the applicable association's Fund or Account.

(i) *Collection and remission of contributions or assessments.* (1) Any producer contribution or assessment due under this section shall be collected at the time of marketing:

(i) From any dealer or warehouse operator who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer; or

(iii) If the tobacco involved is delivered directly to an association, by such association.

(2) A dealer or warehouse operator may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) Any purchaser assessment due under this section shall be collected at the time of marketing:

(i) From the dealer or warehouse operator who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer who may add an amount equal to the purchaser assessment to the price paid by the purchaser for such tobacco.

(4) If tobacco involved is marketed at a warehouse auction, the warehouse operator may add an amount equal to the purchaser assessment to the price paid by the purchaser of such tobacco.

(5) All persons who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association within 15 days of the date on which the tobacco was marketed except as provided in paragraphs (i)(5) (i) and (ii).

(i) Warehouse operators who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association in accordance with the provisions of the loan contact between the association and the warehouse operator.

(ii) Dealers who are responsible for collecting any contribution or assessment as required by this section shall remit such collections to the State FSA office in accordance with part 723 of this title.

(6) Any person who fails to collect and timely remit any collections required by this section shall be subject to a late payment charge. Such late payment shall be calculated and assessed in accordance with part 1403 of this title.

(j) *Penalty for failure to collect and remit contributions or assessments.* (1) If any person fails to collect and remit any contributions or assessments according to the provisions of this section such person shall be liable, in addition to any amount of contributions or assessments and any late payment charges, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco for the immediately preceding year on the quantity of tobacco as to which failure occurs. Such a penalty only shall be assessed after the person has been notified of the pending assessment of the penalty and the person has been afforded an opportunity for a hearing with respect to the assessment of the penalty. However, such marketing penalty shall not be assessed if such contributions or assessment are collected and remitted not later than 15 days after the date required by this part.

(2) If a warehouse operator fails to collect and remit any contribution or assessment to an association within 15

days after the date provided in the loan contract between the warehouse operator and such association, the association shall provide to the State ASC committee for the state in which the warehouse operator's business is located a statement of the reason for the failure of the person to timely remit such collection, including the name and address of the warehouse involved, the pounds of tobacco purchased, the date of purchase, and the date the collection was required to be remitted. The association shall submit such facts within 25 days after the applicable due date regardless of whether such assessment or contribution has been remitted to the association.

(3) The State ASC committee shall be responsible for assessing any marketing penalty determined in accordance with paragraph (j)(1) of this section.

(4) The Deputy Administrator or the Deputy Administrator's designee may reduce the amount of any marketing penalty for which a person otherwise would be liable in accordance with the provisions of this section.

(5) The marketing penalty provided in this section is in addition to, and not exclusive of, any other remedies that may be available with respect to collection and remission of any contributions or assessments made in accordance with this section.

[47 FR 51556, Nov. 16, 1982, and 48 FR 21110, May 11, 1983, as amended at 49 FR 24374, June 13, 1984; 51 FR 32427, Sept. 12, 1986; 53 FR 43675, Oct. 28, 1988; 56 FR 21259, May 8, 1991; 57 FR 43584, Sept. 21, 1992]

§ 1464.11 Nonrefundable marketing assessment.

Effective only for each of the 1991 through 1998 crops of tobacco for which price support is made available according to § 1464.2 of this part, both the producer and purchaser of such tobacco shall each remit to the CCC a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such kind and crop on each pound of tobacco marketed. The nonrefundable marketing assessment will be:

(a) Determined and announced by CCC at the time of announcing the national price support level for applicable kinds of tobacco or as soon thereafter as possible.

(b) Collected and remitted to CCC in accordance with § 1464.10(i) of this part from producers and purchasers at the time of marketing.

(c) Collected by loan associations and remitted to CCC on all such tobacco pledged as loan collateral at the time such 1991 through 1998 crops of tobacco are sold from loan inventories.

(d) Subject to the same penalty for failure to be collected and remitted as provided for in § 1464.10(j) of this part.

(e) Enforceable in the courts of the United States by the Secretary.

[56 FR 21259, May 8, 1991, as amended at 60 FR 19667, Apr. 20, 1995; 62 FR 3198, Jan. 22, 1997]

§ 1464.12 Flue-cured (types 11–14) tobacco.

(a) The 1993-crop national price support level is 157.7 cents per pound.

(b) The 1994-crop national price support level is 158.3 cents per pound.

(c) The 1995-crop national price support level is 159.7 cents per pound.

(d) The 1996-crop national price support level is 160.1 cents per pound.

(e) The 1997-crop national price support level is 162.1 cents per pound.

(f) The 1998-crop national price support level is 162.8 cents per pound.

(g) The 1999 crop national price support level is 163.2 cents per pound.

[58 FR 11962, Mar. 2, 1993, as amended at 59 FR 6867, Feb. 14, 1994; 60 FR 22460, May 8, 1995; 61 FR 37673, July 19, 1996; 62 FR 24800, May 7, 1997; 63 FR 55938, Oct. 20, 1998; 64 FR 66718, Nov. 30, 1999]

§ 1464.13 Fire-cured (type 21) tobacco.

(a) The 1993-crop national price support level is 139.5 cents per pound.

(b) The 1994-crop national price support level is 140.7 cents per pound.

(c) The 1995-crop national price support level is 143.0 cents per pound.

(d) The 1996-crop national price support level is 145.5 cents per pound.

(e) The 1997-crop national price support level is 149.8 cents per pound.

(f) The 1998-crop national price support level is 153.6 cents per pound.

(g) The 1999-crop national price support level is 155.9 cents per pound.

(h) The 2000-crop national price support level is 155.9 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15295, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.14 Fire-cured (types 22–23) tobacco.

(a) The 1993-crop national price support level is 146.4 cents per pound.

(b) The 1994-crop national price support level is 148.3 cents per pound.

(c) The 1995-crop national price support level is 151.8 cents per pound.

(d) The 1996-crop national price support level is 155.7 cents per pound.

(e) The 1997-crop national price support level is 162.3 cents per pound.

(f) The 1998-crop national price support level is 168.1 cents per pound.

(g) The 1999-crop national price support level is 171.6 cents per pound.

(h) The 2000-crop national price support level is 171.6 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15296, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.15 Dark air-cured (types 35–36) tobacco.

(a) The 1993-crop national price support level is 125.5 cents per pound.

(b) The 1994-crop national price support level is 127.3 cents per pound.

(c) The 1995-crop national price support level is 130.4 cents per pound.

(d) The 1996-crop national price support level is 133.9 cents per pound.

(e) The 1997-crop national price support level is 139.8 cents per pound.

(f) The 1998-crop national price support level is 145.0 cents per pound.

(g) The 1999-crop national price support level is 148.1 cents per pound.

(h) The 2000-crop national price support level is 148.1 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15296, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.16 Virginia sun-cured (type 37) tobacco.

(a) The 1993-crop national price support level is 123.3 cents per pound.

(b) The 1994-crop national price support is 124.5 cents per pound.

(c) The 1995-crop national price support is 126.5 cents per pound.

(d) The 1996-crop national price support is 128.8 cents per pound.

(e) The 1997-crop national price support level is 132.6 cents per pound.

(f) The 1998-crop national price support level is 136.0 cents per pound.

(g) The 1999-crop national price support level is 138.0 cents per pound.

(h) The 2000-crop national price support level is 138.0 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27221, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15296, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.17 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

(a) The 1993-crop national price support level is 107.4 cents per pound.

(b) The 1994-crop national price support level is 108.4 cents per pound.

(c) The 1995-crop national price support level is 110.1 cents per pound.

(d) The 1996-crop national price support level is 112.0 cents per pound.

(e) The 1997-crop national price support level is 116.9 cents per pound.

(f) The 1998-crop national price support level is 121.2 cents per pound.

(g) The 1999-crop national price support level is 123.8 cents per pound.

(h) The 2000-crop national price support level is 123.8 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27221, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15296, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.18 Cigar-filler (type 46) tobacco.

(a) The 1993-crop national price support level is 83.4 cents per pound.

(b) The 1994-crop national price support level is 84.4 cents per pound.

(c) The 1995-crop national price support level is 86.1 cents per pound.

(d) Price support shall not be made available for the 1996 and subsequent crops of this type (46).

[58 FR 36863, July 9, 1993, as amended at 59 FR 27221, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996]

§ 1464.19 Burley (type 31) tobacco.

(a) The 1993-crop national price support level is 168.3 cents per pound.

(b) The 1994-crop national price support level is 171.4 cents per pound.

(c) The 1995-crop national price support level is 172.5 cents per pound.

(d) The 1996-crop national price support level is 173.7 cents per pound.

(e) The 1997-crop national price support level is 176.0 cents per pound.

(f) The 1998-crop national price support level is 177.8 cents per pound.

(g) [Reserved]

(h) The 2000 crop national price support level is 180.5 cents per pound.

[58 FR 36859, July 9, 1993, as amended at 59 FR 22725, May 3, 1994; 60 FR 27868, May 26, 1995; 61 FR 50425, Sept. 26, 1996; 62 FR 30230, June 3, 1997; 63 FR 55940, Oct. 20, 1998; 65 FR 78407, Dec. 15, 2000]

§§ 1464.20–1464.23 [Reserved]

§ 1464.24 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulations (7 CFR part 1464) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560–0047 and 0560–0076.

[49 FR 2466, Jan. 20, 1984 and 49 FR 23334, June 6, 1984, as amended at 49 FR 27135, July 2, 1984; 50 FR 4493, Jan. 31, 1985. Redesignated at 56 FR 21259, May 8, 1991; Redesignated at 58 FR 11962, Mar. 2, 1993]

Subpart B—Importer Assessments

SOURCE: 59 FR 10944, Mar. 9, 1994, unless otherwise noted.

§ 1464.101 Definitions.

(a) *Applicability*. The definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

(b) *Terms*. For purposes of this subpart, the following terms shall have the following meanings unless otherwise indicated.

Customs Service. The United States Customs Service of the United States Department of the Treasury.

De minimis special entries. Imports of unmanufactured tobacco when the total importation at any time or on any date is 100 kilograms or less and such tobacco is imported segregated from other tobacco for use as samples, for research, or other use approved by the Director.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture.

Entered. Tobacco shall be considered to have entered the United States when the tobacco has been released by the Customs Service for entry (direct entry or bonded warehouse withdrawal) for consumption into the commerce of the United States, unless the tobacco is brought into the country outside the control of the Customs Service, in which case the tobacco will be considered to have entered the United States when such tobacco physically enters the territory of the United States.

Entry date. The date on which the tobacco was released by Customs Service for consumption into the commerce of the United States, unless the tobacco enters commerce in the United States without such a release, in which case the entry date shall be the date such tobacco physically entered the territory of the United States.

Imported tobacco. Effective January 1, 1994, any unmanufactured tobacco, including Oriental and Turkish tobacco, that was not produced in the United States but has entered the United States.

Importer. A person who owns or controls such tobacco at the time at which the tobacco entered the United States.

Person. An individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity, and, when applicable, a State, a political subdivision of a State, or any agency thereof.

United States. The 50 States of the United States, the District of Columbia, Puerto Rico, or any Territory or Possession of the United States.

Unmanufactured tobacco. Any tobacco that is not processed and packaged as a consumer tobacco product, including, but not limited to, any tobacco classifiable under the Harmonized Tariff Schedule of the United States (HTS) in existence as of January 1, 1994, under Chapter 2401 of the HTS or under classifications 2403912000, 2403914050, 2403914070, 2403990050, 2403990065, and 2403990070 of Chapter 2403 of the HTS.

[59 FR 10944, Mar. 9, 1994, as amended at 64 FR 2803, Jan. 19, 1999]

§ 1464.102 Budget deficit marketing assessment.

(a) *General*. Subject to the limits set out below, a budget deficit marketing assessment (BDMA) shall be remitted by all importers of tobacco for tobacco entered into the commerce of the United States.

(b) *Period of coverage*. Except as provided for in (h), this section shall only apply to tobacco imported after September 13, 1995, and through the 1998 calendar year.

(c) *Tobacco covered*. Except as provided in (g) and (h), this section shall only apply to unmanufactured tobacco entered for consumption into the commerce of the United States that is, as determined by the Director, the same kind or a like kind of tobacco for which a domestic price support program is in effect; provided further that, except as provided in (g) and (h), this section shall not apply to cigar kinds of tobacco.

(d) *Rate*. Except as provided in (h) and subject to provisions in this section dealing with mixed lots, the BDMA rate shall be the rate for the corresponding domestic tobacco for the marketing year for the domestic tobacco which is in progress when the imported tobacco becomes subject to the assessment. The BDMA rate shall be applied on a per kilogram basis to all quantities of such tobacco imported for consumption, except for *de minimis* special entries approved by the Director.

(e) *Mixed entries*. For entries of mixed kinds of tobacco, the importer shall certify the composition of the mixed lot and remit the amount of assessment due for the respective quantity of each applicable kind of tobacco in the mixture. If the importer is unable or unwilling to determine and certify the composition of the mixed lot, the entire lot shall be subject to the BDMA rate for the kind of tobacco with the highest rate.

(f) *Remittance of BDMA*. The BDMA amount due shall be remitted in accordance with § 1464.104 of this part. Failure to remit or timely remit BDMAs shall subject the importer to a marketing penalty on the quantity for which such failure occurred. The penalty will be assessed in accordance with § 1464.106 of this part.

(g) *Records and disputes*. It shall be the responsibility of all importers of tobacco to establish that their tobacco is not subject to any BDMA or is not subject to a higher BDMA than that claimed to be due by such importer. All importers of tobacco must, accordingly, maintain sufficient records to demonstrate that they are not liable for a higher BDMA amount. Disputes involving the application of the BDMA shall be resolved by the Director.

(h) *Tobacco entered prior to September 13, 1995*. Notwithstanding other provisions of this section, all imported tobacco which was entered for consumption into the United States from January 1, 1994, through September 13, 1995, shall be subject to a BDMA to the extent provided for under those rules which were in effect under this part during that period. BDMA's payable for that period shall be paid by the importer and shall be at the rate specified in those rules and subject to the terms of those rules.

[62 FR 3198, Jan. 22, 1997]

§ 1464.103 Importer no-net-cost assessments.

(a) *General*. The importer of any unmanufactured imported burley or flue-cured tobacco shall pay a no-net-cost assessment on each kilogram of such tobacco that is imported after December 31, 1993, regardless of the form in which it is imported and regardless of whether it is mixed or blended with other tobacco, except for *de minimis* special entries.

(b) *Amount of assessment*. The amount of the no-net-cost assessment which shall apply under this section shall be

the amount determined by multiplying:

(1) For imported burley tobacco, the number of kilograms of such tobacco by the sum, converted to per kilogram basis, of the no-net-cost producer and purchaser contributions or assessments as implemented pursuant to subpart A for domestic burley tobacco that is marketed during the domestic marketing year during which the tobacco was imported.

(2) For imported flue-cured tobacco, the number of kilograms of such tobacco by the sum, converted to a per kilogram basis, of the no-net-cost producer and purchaser contribution or assessments as implemented pursuant to subpart A for domestic flue-cured tobacco that is marketed during the domestic marketing year during which the tobacco was imported.

§ 1464.104 Remittance of importer assessments.

(a) *Where to remit.* A person making a remittance shall follow instructions on the reverse side of form CCC–100.

(b) *When to remit.* Importer assessments shall be remitted within 10 business days after the date on which the imported tobacco is entered. For remittances that are mailed, the date of the remittance will be considered the date on which the official U.S. Postal Service postmark was affixed.

(c) *Instructions.* Remittances must be made in accordance with instructions on form CCC–100.

(d) *Documentation.* Unless the Director shall direct otherwise, in writing, each remittance of an importer assessment shall be accompanied by form CCC–100, Importer Entry and Assessment Worksheet, and as applicable, Customs Service Form CF7501 or CF7505, or other Customs Service documentation that, based on the documentation and codes normally required or used by the Customs Service, includes the following with respect to each entry of imported tobacco:

(1) Entry filer code/entry number,

(2) Importer of record number,

(3) Importer of record name and address,

(4) Ultimate consignee number,

(5) Entry date,

(6) District/port of entry,

(7) Harmonized Tariff Schedule Number,

(8) Quantity entered (net weight in kilograms),

(9) Entry type (formal or informal), and

(10) Amount remitted.

(e) *Late payment charge.* Any importer who fails to timely remit any assessment required by this subpart shall be subject to a late payment charge. Such late payment charge shall be calculated and assessed in accordance with part 1403 of this chapter, or successor regulations, and shall be in addition to any penalty due or other charge due.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3198, Jan. 22, 1997]

§ 1464.105 Refund of assessments.

Assessments paid on imported tobacco may be refunded if the person importing such tobacco establishes, to the satisfaction of the Director, that the tobacco on which the assessment was paid has been reexported as unmanufactured tobacco or destroyed in an unmanufactured state. Assessment refunds will be based on entry weight as identified on Customs Service Form CF7501 or CF7505, or other documentation or data as required by the Director or found by the Director to be appropriate. Additional refund documentation, including proof of export, will be required consistent with the ''duty drawback'' provisions administered by the Customs Service pursuant to section 313(a) of the Tariff Act of 1930, as amended. Persons seeking a refund shall submit their request and documentation to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415. Where deemed appropriate, the Director may, in writing, allow the use of substitute documentation and permit payments to successors in interest where the reexporter and importer are not the same. Where exporter and importer are not the same, refunds shall be to the importer unless the importer, in writing, notifies the Director that the payment should be made to the exporter.

§ 1464.106 Marketing penalties.

(a) *Failure to remit assessments.* An importer who fails to timely remit an assessment in accordance with this subpart shall be subject to a marketing penalty.

(1) *Budget deficit marketing assessment.* With respect to the assessment referred to in § 1464.102, if an importer fails to pay or to timely remit the BDMA, such importer shall be subject to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective like kind domestic tobacco being imported for the domestic marketing year which immediately preceded the domestic marketing year in which the imported tobacco became subject to the BDMA. Such marketing penalty rate shall apply to the quantity of tobacco on which the failure occurred. Amounts due for the penalty shall be in addition to any other amount as may be due, including, but not limited to, the amount due for the BDMA itself, or any applicable late fees, charges, or interest.

(2) *Importer no-net-cost assessment.* With respect to assessments referred to in § 1464.103, if an importer of burley or flue-cured tobacco fails to timely remit a no-net-cost assessment in accordance with the provisions in this subpart, such importer shall be liable, in addition to any no-net-cost assessment or other sum due and any late payment charges, to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of domestic tobacco (burley or flue-cured) for the respective domestic tobacco marketing year in which such imported tobacco was imported, on the quantity of tobacco as to which the failure occurs.

(b) *Exception to marketing penalty.* A marketing penalty otherwise required by this paragraph may be forgiven if the assessment for which nonpayment of the penalty could be assessed is remitted not later than 15 calendar days after the date otherwise required for the remittance by this subpart.

(c) *Notification of marketing penalty.* Before a marketing penalty is assessed, the importer shall be notified of the pending assessment and shall be afforded an opportunity for a hearing with respect to the assessment of the penalty. Such notification will be by, and such hearing will be before, the Director or designee.

(d) *Marketing penalty reduction.* The Executive Vice President, CCC, or designee, may reduce the amount of any marketing penalty for which a person otherwise would be liable under the provisions of this section upon finding that failure to comply was unintentional or without knowledge on the part of such person and that such reduction would not damage the tobacco program or the administration of this part.

(e) *Prohibition of use, processing or marketing of tobacco for which the assessments have not been paid; other remedies.* The knowing use, processing, or marketing of tobacco in the commerce of the United States of any tobacco for which an assessment or related charge required or provided for by this subpart is past due, is prohibited. The penalties and other remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3198, Jan. 22, 1997]

§ 1464.107 Recordkeeping.

(a) *Retention of records.* Each importer of tobacco shall maintain all records that are relevant to any imported tobacco that is subject to an assessment in accordance with this subpart. Such records shall be retained for a period of three years following the date of entry of such tobacco. The burden of establishing compliance with this part shall be on the importer of the tobacco.

(b) *Examination of records and reports.* The Executive Vice President, CCC, the Director, or any person authorized by one of such persons, or any auditor or agent of the Office of the Inspector General, is authorized to examine any records that such person has reason to believe are relevant to any matter pertinent to the payment of importer assessments under this subpart. Upon request of an authorized person, each importer shall make available for examination such records as are under such

importer's control that may be relevant to imported tobacco that is subject to an assessment in accordance with this subpart or otherwise relevant to the administration of this subpart. Upon a failure to provide access or records, the Director may presume that such an inquiry would have produced information unfavorable to the party to the inquiry and shall make further determinations in the matter accordingly.

§ 1464.108 Reconsideration and appeal.

An importer may request the Director to reconsider any determination of the amount of any assessment due, any marketing penalty assessed, or other adverse determination rendered in accordance with this subpart. Any request for reconsideration shall be made within 30 calendar days of the date of the notification of such assessment, marketing penalty, or adverse determination. If the importer is dissatisfied with a determination rendered by the Director with respect to a request for reconsideration, such importer may appeal the determination to the Director, National Appeals Division, FSA. Any such appeal shall be handled in accordance with the provisions of 7 CFR part 780.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3199, Jan. 22, 1997]

Subpart C—Tobacco Loss Assistance Program 1999

SOURCE: 65 FR 7960, Feb. 16, 2000, unless otherwise noted.

§ 1464.201 Applicability and basic terms for payments to states.

(a) This subpart sets forth the terms and conditions of the Tobacco Loss Assistance Program (TLAP) authorized by Section 803 of the FY 2000 Agriculture Appropriations Act (Public Law 106–78). That section provides that $328 million of funds of the Commodity Credit Corporation shall be made available to make payments to States for the benefit of certain persons for the reduction in quantity of tobacco quota.

(b) States, in order to be eligible for payment under this part, must be States having farms to which, for ''eligible kinds of tobacco'' only, tobacco quotas or allotments were made available under 7 CFR part 723 for the 1999 crop years. ''Eligible kinds of tobacco'' for purposes of this part will be any kind of tobacco for which the national marketing quota for 1999 was reduced from the 1998 level.

(c) Except as provided in § 1464.205, all payments under this part shall be made to States and only to those states with producers of eligible kinds of tobacco.

(d) Such payments shall be made to the State as soon as practicable after the application for such payment by the State.

(e) Payments from the $328 million allotted to this program for loss of quota shall be made to the qualifying States in proportion, as determined by the Executive Vice President of CCC, to the relative quantity of lost quota apportioned to the qualifying States for eligible kinds of tobacco.

(f) In the case of a State that is a party to the National Tobacco Growers Settlement Trust, the State shall, to the extent practicable, distribute funds made available under this part (that is, under the TLAP) to eligible persons in the State in accordance with the formulas established pursuant to the Trust to the extent provided for in the authorizing statute. In the case of a State that is not party to the National Tobacco Growers Settlement Trust, the State shall distribute funds made available under TLAP to eligible persons in the State in a manner determined by the State and approved by the Executive Vice President, CCC. The National Tobacco Growers Settlement Trust referred to in this section is that private trust created by tobacco companies to make approximately $5 billion in payments available to parties involved in the production of tobacco, and which has distributed the monies through local, state trusts.

§ 1464.202 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Executive Vice President of the CCC and the Deputy Administrator for Farm Programs of the Farm Service Agency of the Department of

Agriculture (who shall be hereafter referred to in this part as the ''Deputy Administrator'').

(b) The Deputy Administrator on behalf of the Executive Vice President will determine the allocation of funds available for apportionment to qualifying States.

(c) Funds allocated to States will be distributed directly to the State or may, at the direction of the State, be transferred to a disbursing or other agent of the State's choice.

§ 1464.203 Eligibility.

(a) Except as provided in paragraph (d) of this section, the State's receipt of funds or control of funds under this part shall be conditioned upon the promise, obligation and understanding that the funds will be distributed to eligible tobacco growers as that term is defined in this section, in accord with the provision of this part.

(b) For a person to be considered an eligible ''tobacco grower'' for purposes of this part, such person must own or operate, or produce tobacco on a farm:

(1) To which was assigned a poundage quota or acreage allotment for the 1999 crop year for an eligible kind of tobacco; and

(2) That was used for the production of tobacco during the 1998 or 1999 crop year.

(c) All disputes as to eligibility shall be the responsibility of the States and any terms in the authorizing statute that are contrary to the terms of this part shall be controlling.

(d) Any interest earned by the States on sums distributed in this part shall be distributed in turn to eligible tobacco growers.

(e) Of the sums made available to the States under this part, and interest earned on such sums, an amount may be deducted by the State for such reasonable amounts as may be needed to pay the cost of distributing the funds, including the cost of private agents who may be engaged to assist the State in that respect or provide service to the State in that respect.

[65 FR 7960, Feb. 16, 2000; 65 FR 10933, Mar. 1, 2000]

§ 1464.204 Appeals.

Any person who believes a determination made by the State government is in error should seek relief from the State government. Eligibility decisions and determinations made by the State government are not appealable to the Department of Agriculture under part 780 of this chapter and will not be considered to be determinations of the Department of Agriculture.

§ 1464.205 Alternate distribution.

Nothing in §§ 1464.201 through 1464.204 shall prohibit the Executive Vice President from providing assistance to the States with respect to the distribution of the monies to eligible tobacco growers or prevent the Executive Vice President from making distributions directly to the eligible growers in lieu of the manner of distribution otherwise provided for in this part.

Subpart D—Tobacco Disaster Assistance Program

SOURCE: 65 FR 36581, June 8, 2000, unless otherwise noted.

§ 1464.300 [Reserved]

§ 1464.301 Applicability and basic terms for payments.

(a) This subpart sets forth the terms and conditions of the Tobacco Disaster Assistance Program (TDAP) authorized by Public Law 106–113. That legislation provides $2.8 million to the Commodity Credit Corporation (CCC) to be made available to eligible persons who have suffered quality or quantity losses due to natural disasters on tobacco crops harvested and placed in a warehouse and not sold.

(b) Payments from the $2.8 million allotted to this program shall be made to eligible persons in proportion, as determined by the Executive Vice President of CCC, to each person's relative quantity of qualifying tobacco losses suffered due to natural disasters on crops harvested and placed in a warehouse and not sold.

§ 1464.302 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Executive Vice President of the CCC and the Deputy Administrator for Farm Programs of the Farm Service Agency of the Department of Agriculture (who shall be hereafter referred to in this part as the ''Deputy Administrator''). The program shall be carried out in the field by State and county Farm Service Agency committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegations herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1464.303 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Tobacco Disaster Assistance Program of this subpart. The terms defined in § 723.104 of this title shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Eligible tobacco means 1999 marketing year flue-cured tobacco, (types 11, 12, 13 and 14).

Tobacco producer means one who possesses a beneficial interest in eligible tobacco as defined in this subpart.

§ 1464.304 Loss requirements.

Except as otherwise determined by the Deputy Administrator consistent with the provisions of Public Law. 106–113 authorizing the payment of the $2.8 million, to qualify for payment under this part, the person seeking the payment must have had a loss of eligible tobacco in 1999 in North Carolina due to hurricanes Dennis, Floyd or Irene and such loss must have been a quality or quantity loss on crops harvested and placed in a warehouse and not yet sold at the time that the loss occurred in the warehouse.

§ 1464.305 Signup.

(a) For losses in North Carolina (as provided for in § 1464.304) a request for benefits under this subpart must be submitted to the CCC at the county FSA office that is designated as the administrative office for the farm on which the tobacco was produced. All requests for benefits and supporting documentation must be filed in the county FSA office by the date established by the Deputy Administrator. However, parties seeking an exception to the normal rules of eligibility in § 1464.304 shall, in lieu of filing a claim with the county committee, file a petition directly with the Deputy Administrator. Such petitions for exception must be filed by the date established by the Deputy Administrator for filing requests for benefits and supporting documentation, or fifteen days after the date of the publication of this regulation, whichever is later, in order to be considered.

(b) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1464.306 Proof of loss.

(a) Tobacco producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that they suffered the claimed loss. The documentary evidence of the loss, quantity of the loss

and type of tobacco claimed for payment shall be reported to CCC together with any supporting documentation as may be required under paragraph (b) of this section.

(b) The tobacco producer shall provide any available supporting documents that may be requested by the Farm Service Agency county committee for purposes of verifying the loss. Examples of supporting documentation include, but are not limited to: auction barn floor sheets, transportation receipts, and any other documents available to confirm the presence of the tobacco on the warehouse floor and the subsequent losses. Certifications of third parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer may be requested and be subject to review by the county committee. Failure to provide documentation that is satisfactory to the county committee will result in disapproval of the application by the county committee.

(c) In all circumstances, tobacco producers shall certify the accuracy of the information provided.

§ 1464.307 Benefits.

The payment amount shall be determined by apportioning the available funds on a poundage basis among the timely claims that are filed, with an allowance for a reserve to handle disputes. The Deputy Administrator may make a preliminary payment before making a final payment in which case later adjustments may be made and a refund may be due from the payee to the CCC after such an adjustment.

§ 1464.308 [Reserved]

§ 1464.309 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except that the regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to payments made under this part and such offsets and withholdings may be taken against such payments.

(b) Any producer entitled to any payment may assign the right to receive such payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1464.310 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to payments and must refund all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter received by such producer with respect to all applications and the producer's interest in all applications shall be terminated.

§ 1464.311 Refunds to CCC.

(a) Persons who are party to the tobacco disaster assistance program application must refund to CCC any excess payments made by CCC with respect to such application.

(b) In the event that a benefit under this subpart was established as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

§ 1464.312 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1464.313 Estate, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1464.314 Death, incompetence, or disappearance.

In the case of death, incompetence, or disappearance, of any person who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

§ 1464.315 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the eligibility provisions for kinds of tobacco and others for which there are no appeal rights because they involve matters of general applicability, shall be allowed in accordance with parts 11 and 780 of this title.

Subpart E—Tobacco Loss Assistance Program 2000

SOURCE: 65 FR 65723, Nov. 2, 2000, unless otherwise noted.

§ 1464.401 Applicability and basic terms for payments.

(a) This subpart sets forth the terms and conditions of the Tobacco Loss Assistance Program 2000 (TLAP00) authorized by section 204(b) of the Agricultural Risk Protection Act of 2000 (Public Law 106–224). That section provides that $340 million of funds of the Commodity Credit Corporation (CCC) shall be made available to make direct payments to eligible persons, on a farm:

(1) For which the quantity of quota of eligible tobacco allotted to the farm was reduced from the 1999 crop year to the 2000 crop year; and

(2) That is used for the production of eligible tobacco during the 2000 crop year.

(b) The amounts made available to farms in a State shall be divided based on the quota of eligible tobacco available to each farm of an eligible person for the 2000 crop year.

(c) The amounts made available to farms in a State under paragraph (b) of this section shall be divided among eligible persons who are quota owners, quota lessees, controllers, growers, tenants and producers on farms in the State but only to the extent that is otherwise provided for in this subpart.

(d) The funds made available for ''eligible persons'' shall be allocated among States in the following dollar amounts:

Alabama	$100,000
Arkansas	1,000
Florida	2,500,000
Georgia	13,000,000
Indiana	5,400,000
Kansas	23,000
Kentucky	140,000,000
Missouri	2,000,000
North Carolina	100,000,000
Ohio	6,000,000
Oklahoma	1,000
South Carolina	15,000,000
Tennessee	35,000,000
Virginia	19,000,000
West Virginia	1,300,000
Wisconsin	675,000

§ 1464.402 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Executive Vice President of the CCC and the Deputy Administrator for Farm Programs of the Farm Service Agency (FSA) of the Department of Agriculture (who shall be hereafter referred to in this part as the ''Deputy Administrator''). The program shall be carried out in the field by State and county FSA committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegations in this part to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. The Deputy Administrator may modify or revise deadlines and requirements contained in this subpart as determined needed or appropriate to accomplish the goals of this program.

§ 1464.403 Eligibility.

For a person to be considered an ''eligible person'' for purposes of this part, such person must own, operate or produce eligible tobacco on a farm for which a quota reduction from the 1999 crop year to the 2000 crop year occurred and that was used for the production of tobacco during the 2000 crop year.

§ 1464.404 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the program (''TLAP00'') of this subpart. The definitions in 7 CFR 718.2 and 723.104 also apply to the program. To the extent that the definitions in this section differ from the definitions in 7 CFR 718.2 and 723.104, the definitions in this section apply rather than the definitions in 7 CFR 718.2 and 723.104. The following terms shall have the following meanings:

Controller means that person or entity who, as determined by the Deputy Administrator, controls the land used to produce eligible tobacco and share in the risk of production.

Eligible person means, with respect to payments under this part, a person who owns or operates, or produces eligible tobacco on a farm for which the quantity of quota of eligible tobacco allotted to the farm under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 was reduced from the 1999 crop year to the 2000 crop year and that will be used for the production of eligible tobacco during the 2000 crop year. For these purposes, the quota will be considered produced if it ''considered produced'' under the normal rules that apply with respect to tobacco under this part and under 7 CFR part 723; however any such actual production, production that is considered under this part and under 7 CFR part 723 to have occurred, will suffice to qualify the parties associated with that quota for payments under this part to which they would otherwise be entitled. That is, the amount of payment will not be tied to the amount of production which qualifies the party for participation under this program except as might otherwise be specified in this subpart. However, tobacco quotas or allotments which are suspended from production because of a Conservation Reserve Contract with the CCC will not be treated as ''considered produced'' for these purposes and will not generate payments under this subpart. For purposes of this subpart, further, an eligible persons's status, as owner or controller or producer of the tobacco, will be determined as of July 3, 2000.

Eligible tobacco means each of the following kinds of tobacco: flue-cured tobacco (types 11, 12, 13 and 14), dark fire-cured tobacco (type 21), burley tobacco (type 31), and cigar-binder tobacco (types 54 and 55).

Grower/tenant means person(s) or entities who provide labor to produce tobacco and share in the risk of production.

Payment pounds means the pounds of tobacco for which a person is eligible to be paid under this subpart.

Producer means person(s) or entity(s) actively engaged in planting, growing, harvesting, and/or marketing of tobacco, or who shares in the risk of producing the crop.

Quota owner means the person(s) or entities who own the land for which

quota is established under the Agricultural Adjustment Act of 1938, as amended.

Share in the risk of production means having a direct financial stake in the success of the crop through a direct share in the actual proceeds from the actual marketing of the crop which share is conditional upon the success of that marketing. Farm owners who cash-lease their farm land to a tobacco producer for the right to grow tobacco on that land and receive payment for such right regardless of whether or not a tobacco crop is marketed are not considered to share in the risk of production. Farm laborers who provide service in exchange for a wage and whose payment is not subject to the marketing of the tobacco crop are not considered to be sharing in the risk of production.

TLAP00 means the Tobacco Loss Adjustment Program, for the 2000 crop, which is provided for in this subpart.

§ 1464.405 Sign up.

(a) Eligible persons who wish to apply for TLAP00 funds, must file an application with the county FSA office by the date established by the Deputy Administrator. However, a late filed application filed late because of hardship may be accepted. Acceptance of such applications must be approved by the Deputy Administrator, subject to the availability of funds.

(b) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1464.406 [Reserved]

§ 1464.407 Payment benefits.

(a) TLAP00 payments shall be made to ''eligible persons'' not later than October 20, 2000 on the basis of two formulas.

(1) All flue-cured and cigar-binder funds in a State will distribute 50 percent to eligible quota owners and 50 percent to eligible producers.

(2) All burley and dark fire-cured tobacco funds in a State will be distributed one-third to quota owners; one-third to the controller; and one-third to grower(s)/tenant(s).

(b) As provided in paragraph (a) of this section the formulas shall be applied to the kinds of tobacco as follows:

(1) The allocated funds for cigar-binder (types 54 and 55) will be disbursed with 50 percent being paid to quota owners based on basic allotment times NASS yield and 50 percent being paid to producers based on basic allotment times the NASS yield. The NASS yield for cigar-binder (types 54 and 55) is 2,054 pounds per acre.

(2) The allocated funds for dark fire-cured (type 21) will be disbursed with one-third being paid to quota owners based on the 2000 crop year basic allotment times NASS yield, one-third being paid to the controller based on the 2000 crop year effective allotment times NASS yield, and one-third being paid to grower(s)/tenant(s) based on the 2000 crop year effective quota times NASS yield. The NASS yield for dark fire-cured (type 21) is 2,139 pounds per acre.

(3) The allotted funds for flue-cured tobacco (types 11, 12, 13 and 14) will be disbursed with 50 percent paid to quota owners on the 2000 crop year basic quota and 50 percent being paid to producers on the 2000 crop year basic quota.

(4) The allotted funds for burley tobacco (type 31) will be disbursed with one-third being paid to quota owners based on the 2000 crop year basic quota; one-third being paid to the farm controller based on the 2000 crop year effective quota before any disaster lease and transfer pounds; and one-third being paid to grower(s)/tenant(s) based on the 2000 crop year effective quota before any disaster lease and transfer pounds.

(c) The Secretary shall use the amount allocated to the State of Georgia to make payments to eligible persons in the State of Georgia only if the State of Georgia agrees to use an equal amount (not to exceed $13,000,000) to make payments at the same time, or subsequently, to the same eligible persons in the same manner as provided for in this section.

(d) The payment amount shall be determined by apportioning the allocated funds for each State on a poundage basis among the timely applications that are filed, with an allowance for a

reserve to handle hardships and appeals.

(e) All payments under this part are subject to the eligibility of funds; further, terms used in this part may be further refined and applied as will more closely align the payments made under this subpart with payments made under the various State programs which have preceded it. In the case where a payment to a farm is disputed the Deputy Administrator may require that all interested parties agree to the resolution of the dispute before any payment is made and may delay payments to the farm until any such disputes are resolved. Also, as determined appropriate to accomplish the desire that program payments be made expeditiously in a manner that is administratively efficient, the Deputy Administrator may properly exclude payments to a person who does not file a timely claim and all payments may be made to those parties whose claim to the payment is not challenged. Nothing in this section shall, however, be construed to prevent the agency from denying any payment to any person based upon a failure of that person to meet any eligibility criteria set forth in this part.

§ 1464.408 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor, except that the regulations governing offsets and withholdings found at 7 CFR part 1403 shall be applicable to payments made under this part and such offsets and withholdings may be taken against such payments.

(b) Any producer entitled to any payment may assign the right to receive such payments, in whole or in part, as provided in 7 CFR part 1404.

§ 1464.409 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to payments and must refund all payments, plus interest determined in accordance with 7 CFR part 1403.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments, plus interest determined in accordance with 7 CFR part 1403, received by such producer with respect to all applications. The producer's interest in all applications shall be terminated.

§ 1464.410 Refunds to CCC.

Persons who are party to the TLAP00 application must refund to CCC any excess payments made by CCC with respect to such application with interest.

§ 1464.411 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1464.412 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such persons furnish evidence of the authority to execute such documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and has executed the applicable program documents; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1464.413 Death, incompetence, or disappearance.

In the case of death, incompetence, or disappearance of any person who is eligible to receive assistance in accordance with this part, such person or persons as are specified in 7 CFR part 707 may receive such assistance.

§ 1464.414 Appeals.

Appeals of determinations made under this part shall be heard under the provisions appearing in 7 CFR parts 11 and 780. Provisions of general applicability are not appealable and likewise matters committed to agency discretion may not be appealable. Nothing in this section shall be taken to expand the scope of review of any determination or make a determination appealable that would otherwise not be appealable.

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Form Approved - OMB No. 0560-XXXX

CCC-100
(Proposal 2)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

IMPORTER ENTRY AND ASSESSMENT WORKSHEET
(Unmanufactured Tobacco Entered for Consumption)

1. IMPORTER OF RECORD NAME AND ADDRESS

2. ASSESSMENT RATES *(per kg)*:
Marketing _____
INNC *(Flue-Cured)* _____
INNC *(Burley)* _____

3. ENTRY FILER CODE/ ENTRY NO.	4. ENTRY DATE	5. IMPORTER OF RECORD NO.	6. ULTIMATE CONSIGNEE NO.	7. DISTRICT/PORT CODE

PART A - DESCRIPTION AND CALCULATION OF ASSESSMENTS

8. TYPE(s) OF TOBACCO	9. HTS NUMBER(s)	10. DESCRIPTION OF MERCHANDISE	11. NET QUANTITY (per kg)	12. MARKETING ASSESSMENT AMOUNT	13. INNC ASSESSMENT AMOUNT
FLUE-CURED				$	$
				$	$
				$	$
				$	$
				$	$
				$	$
		14. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNTS REMITTED		$	$
BURLEY				$	$
				$	$
				$	$
				$	$
				$	$
				$	$
		15. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNTS REMITTED		$	$
OTHER				$	
				$	
				$	
				$	
				$	
				$	
		16. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNT REMITTED		$	

DRAFT

PART B - CERTIFICATION OF DECLARANT

I certify, under penalty of law, that the information in this document is true, correct and complete to the best of my knowledge. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.

17A. SIGNATURE	17B. TITLE	17C. DATE

18. RETURN TO:
United States Department of Agriculture
Agricultural Stabilization and Conservation Service
KCMO/AOD/CMB
P.O. Box 419205
Kansas City, MO 64141-6205

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.
1466.1 Applicability.
1466.2 Administration.
1466.3 Definitions.
1466.4 Program requirements.
1466.5 Priority areas and significant statewide natural resource concerns.
1466.6 Conservation plan.
1466.7 Conservation practices.
1466.8 Technical and other assistance provided by qualified personnel not affiliated with USDA.

Subpart B—Contracts

1466.20 Application for contracts and selecting offers from producers.
1466.21 Contract requirements.
1466.22 Conservation practice operation and maintenance.
1466.23 Cost-share and incentive payments.
1466.24 Contract modifications and transfers of land.
1466.25 Contract violations and termination.

Subpart C—General Administration

1466.30 Appeals.
1466.31 Compliance with regulatory measures.
1466.32 Access to operating unit.
1466.33 Performance based upon advice or action of representatives of CCC.
1466.34 Offsets and assignments.
1466.35 Misrepresentation and scheme or device.

AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa–3839aa–8.

SOURCE: 62 FR 28284, May 22, 1997, unless otherwise noted.

Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Commodity Credit Corporation (CCC) provides technical, educational, and financial assistance to eligible farmers and ranchers to address soil, water, and related natural resources concerns, and to encourage environmental enhancements, on their lands in an environmentally beneficial and cost-effective manner. The purposes of the program are achieved through the implementation of structural, vegetative, and land management practices on eligible land.

§ 1466.2 Administration.

(a) Administration of EQIP is shared by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS shall:

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

(2) Establish policies, procedures, priorities, and guidance for program implementation, including determination of priority areas;

(3) Establish cost-share and incentive payment limits;

(4) Determine eligibility of practices;

(5) Provide technical leadership for conservation planning and implementation, quality assurance, and evaluation of program performance; and

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

(c) FSA shall:

(1) Be responsible for the administrative processes and procedures for applications, contracting, and financial matters, including allocation and program accounting; and

(2) Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes, and administrative and financial performance reporting.

(d) NRCS and FSA shall concur in establishing policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

(f) CCC may enter into cooperative agreements with other Federal or State agencies, Indian tribes, conservation districts, units of local government, and public and private not for profit organizations to assist CCC with implementation of this part.

§ 1466.3 Definitions.

The following definitions shall apply to this part and all documents issued

in accordance with this part, unless specified otherwise:

Administrator means the Administrator of the FSA, United States Department of Agriculture (USDA), or designee.

Agricultural land means cropland, rangeland, pasture, forest land, and other land on which crops or livestock are produced.

Animal unit means 1,000 pounds of live weight of any given livestock species or any combination of livestock species.

Animal waste management facility means a structural practice used for the storage or treatment of animal waste.

Applicant means a producer who has requested in writing to participate in EQIP. Producers who are members of a joint operation shall be considered one applicant.

Chief means the Chief of NRCS, USDA, or designee.

Confined livestock operation means a livestock facility that stables, confines, feeds, or maintains animals for a total of 45 days or more in any 12-month period and does not sustain crops, vegetation, forage growth, or post-harvest residues within the confined area in the normal growing season over any portion of the confinement facility.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation management system (CMS) means any combination of conservation practices and management practices that, if applied, will protect or improve the soil, water, or related natural resources. A CMS may treat one or all of the natural resources to the sustainable level, or to a greater or lesser extent than the sustainable level.

Conservation plan means a record of a participant's decisions, and supporting information, for treatment of a unit of land or water, and includes the schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems.

Conservation practice means a specified treatment, such as a structural or vegetative practice or a land management practice, which is planned and applied according to NRCS standards and specifications as a part of a CMS.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

Cost-share payment means the monetary or financial assistance from CCC to the participant to share the cost of installing a structural or vegetative practice.

County executive director means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

Designated conservationist means a NRCS employee whom the State conservationist has designated as responsible for administration of EQIP. In the case of a priority area or other area that crosses State borders, the Chief or the Chief's designee will designate the NRCS official responsible for administration of EQIP in the priority area.

Farm Service Agency county committee means a committee elected by the agricultural producers in the county or area, in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, or designee.

Farm Service Agency State committee means a committee in a State or the Caribbean Area (Puerto Rico and the Virgin Islands) appointed by the Secretary in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Incentive payment means the monetary or financial assistance from CCC to the participant in an amount and at

a rate determined appropriate to encourage the participant to perform a land management practice that would not otherwise be initiated without program assistance.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for a Indian or tribal beneficiary, or

(2) A Indian or tribal beneficiary holds title and the United States maintains a trust relationship.

Land management practice means conservation practices that primarily require site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Life span means the period of time specified in the contract or conservation plan during which the conservation management systems or component conservation practices are to be maintained and used for the intended purpose.

Liquidated damages means a sum of money stipulated in the contract which the participant agrees to pay if the participant breaches the contract. The sum represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Livestock means animals produced for food or fiber such as dairy cattle, beef cattle, poultry, turkeys, swine, sheep, horses, fish and other animals raised by aquaculture, or animals the State conservationist identifies in consultation with the State technical committee.

Livestock production means farm and ranch operations involving the production, growing, raising, breeding, and reproduction of livestock or livestock product.

Livestock-related natural resource concern means any environmental condition, either on-site or off-site, that is directly related to livestock activity or to livestock manure or waste.

Local work group means representatives of FSA, the Cooperative State Research, Education, and Extension Service (CSREES), the conservation district, and other Federal, State, and local government agencies, including Tribes and Resource Conservation and Development councils, with expertise in natural resources who consult with NRCS on decisions related to EQIP implementation.

National conservation priority area means a watershed, multi-state area, or region of specific environmental sensitivity designated by the Chief.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means an applicant who is a party to an EQIP contract.

Priority area means a watershed, area, or region that is designated under this part because of specific environmental sensitivities or significant soil, water, or related natural resource concerns.

Private agribusiness sector means agricultural producers, certified crop advisors, professional crop consultants that

are certified or certified and independent, agricultural cooperatives, integrated pest management coordinators and scouts, agricultural input retail dealers, and other technical consultants.

Producer means a person who is engaged in livestock or agricultural production.

Regional conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a NRCS region.

Related natural resources means those natural resources that are associated with soil and water, including air, plants, and animals, and the land or water on which they may occur, including grazing land, wetland, forest land, and wildlife habitat.

Resource management system means a conservation management system that, when implemented, achieves sustainable use of the soil, water, and related natural resources.

Secretary means the Secretary of the United States Department of Agriculture.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State executive director means the FSA employee authorized to direct and supervise FSA activities in a State or the Caribbean Area (Puerto Rico and the Virgin Islands).

State technical committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Structural practice means a conservation practice which primarily involves the establishment, construction, or installation of a site-specific measure to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, and capping of abandoned wells.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and provide quality assurance for professional conservationists; and evaluation and assessment of the program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

Vegetative practice means a conservation practice which primarily involves the establishment or planting of a site-specific vegetative measure to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, contour grass strips, filterstrips, critical area plantings, tree planting, and permanent wildlife habitat.

§ 1466.4 Program requirements.

(a) Program participation is voluntary. The participant, in cooperation with the local conservation district, develops a conservation plan for the farm or ranching unit of concern. The participant's conservation plan serves as the basis for the EQIP contract. CCC provides cost-share or incentive payments to apply needed conservation practices and land use adjustments within a time schedule specified by the conservation plan.

(b) The Chief determines the funds available to NRCS for technical assistance according to the purpose and projected cost for which the technical assistance is provided by NRCS or designee in a fiscal year. The Chief allocates an amount according to the type of expertise required, the quantity of time involved, the timeliness required, the technology needed, and other factors as determined appropriate by the Chief. Funding shall not exceed the projected cost to NRCS of the technical assistance provided in a fiscal year.

(c) To be eligible to participate in EQIP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(2) Have control of the land for the life of the proposed contract period.

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the

Chief determines that there is sufficient assurance of control;

(ii) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC with the written concurrence of the landowner in order to apply a structural or vegetative practice.

(3) Submit a conservation plan that is acceptable to NRCS, is approved by the conservation district, and is in compliance with the terms and conditions of the program;

(4) Comply with the provisions at § 1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable; and

(5) Supply information as required by CCC to determine eligibility for the program.

(d) Land used as cropland, rangeland, pasture, forest land, and other land on which crops or livestock are produced, including agricultural land that NRCS determines poses a serious threat to soil, water, or related natural resources by reason of the soil types; terrain; climate; soil, topographic, flood, or saline characteristics; or other factors or natural hazards, including the existing agricultural management practices of the applicant, may be eligible for enrollment in EQIP. Additionally, land may only be considered for enrollment in EQIP if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is under private control for the contract period and is included in the participant's operating unit;

(ii) Conservation practices will contribute to an improvement in the identified natural resource concern; and

(iii) The participant has provided CCC with written authorization from the government landowner to apply the conservation practices; or

(3) Tribal, allotted, or Indian trust land.

(e) Fifty percent of available EQIP funds will be targeted to livestock-related natural resource concerns, including concerns on grazing lands and other lands directly attributable to livestock, measured at the national level.

§ 1466.5 Priority areas and significant statewide natural resource concerns.

(a)(1) Consistent with maximizing the overall environmental benefits per dollar expended by the program, NRCS may:

(i) Designate a watershed, an area, or a region of special environmental sensitivity or having significant soil, water, or related natural resource concern as a priority area and give special consideration to applicants who have conservation plans that address the natural resource concern(s) for which the priority area was designated;

(ii) Designate national conservation priority areas where the nature or scope of a natural resource concern necessitates greater coordination of efforts across boundaries; and

(iii) Identify significant statewide natural resource concerns outside a priority area.

(2) In addition to other factors identified in this section, priority areas, national conservation priority areas, and significant statewide natural resource concerns shall emphasize off-site benefits to the environment and coordination with other Federal and non-Federal conservation programs, including the Conservation Reserve Program and the Wetlands Reserve Program.

(b) CCC may approve technical, educational, and financial assistance under this part to participants with significant statewide natural resource concerns outside a priority area.

(c) To be considered for approval of a priority area, a Federal, State, or local government agency, Indian tribe, or a private group or entity shall work cooperatively with a respective local work group and State technical committee in identifying potential priority areas. The local work group shall obtain input from private individuals, groups, and organizations when considering and identifying potential priority areas. Proposals developed at the local level shall be reviewed by the State technical committee which makes a recommendation to the NRCS State conservationist. The priority area proposal shall include:

(1) A description, quantified when and where possible, of the nature and extent of natural resource concerns in the proposed area;

(2) A description, quantified when and where possible, of how the proposed goals, objectives, and solutions for the natural resource problems would maximize the environmental benefits that would be delivered with the requested Federal dollars, both within the priority area and as part of the overall program provided under this part;

(3) Background information such as science-based data on environmental status and needs, soils information, demographic information, and other available technical data that illustrate the nature and extent of natural resource concerns in the priority area or the appropriateness of the proposed solution to those natural resource concerns.

(4) The existing human resources, incentive programs, education programs, and on-farm research programs available at the Federal, State, Indian tribe, and local levels, both public and private, to assist with the areawide activities;

(5) The technical, educational, and financial assistance needed from EQIP to help meet the areawide goals and objectives;

(6) Ways and means to measure performance and success, quantified when and where possible, and plans to use existing or obtain additional science-based information; and

(7) An explanation, quantified when and where possible, of the degree of difficulty producers face in complying with environmental laws.

(d) The NRCS State conservationist, in consultation with the State technical committee and based on recommendations of local work groups, will approve the designation of a priority areas and make funding recommendations to the Chief. NRCS will evaluate proposals for priority area designations according to natural resource and environmental factors as identified in paragraph (d)(1) of this section, the economic significance of the factors, the incorporation of conservation practices that best address the factors, and the ability to obtain multiple conservation benefits relative to the significance of these natural resource factors.

(1) NRCS shall consider the following factors in determining the significance of the natural resource concern(s) identified in the proposal:

(i) Soil types and characteristics;

(ii) Terrain and topographic features;

(iii) Climatic conditions;

(iv) Flood hazards;

(v) Saline characteristics of land or water;

(vi) Environmental sensitivity of the land, such as wetlands and riparian areas;

(vii) Quality and intended use of the land;

(viii) Quality and intended use of the receiving waters, including fishery habitat and source of drinking water supply;

(ix) Wildlife and wildlife habitat quality and quantity;

(x) Quality of the air; or

(xi) Other natural hazards or other factors, including the existing agricultural management practices of the producers in the area or pest problems which may threaten natural resources.

(2) NRCS will consider the following factors in its allocation of funds:

(i) Condition of the natural resources;

(ii) Significance of the natural resource concern;

(iii) Improvements that NRCS expects will result from implementation of the conservation plan;

(iv) Expected number of producers who will participate and the time and financial commitment that the producers will provide;

(v) Estimated program cost to provide technical, educational, and financial assistance;

(vi) Level of coordination with and support from existing Federal, State, tribal, and local programs, including private sources, and both direct and in-kind contributions;

(vii) Ways the program can best assist producers in complying with Federal, State, and tribal environmental laws, quantified where possible; and

(viii) Other factors the NRCS determines will result in maximization of environmental benefits per dollar expended.

(e) A NRCS State conservationist, in consultation with a State technical committee and based on recommendations of a local work group, may approve program assistance to participants with significant statewide natural resource concerns outside a funded priority area.

(f)(1) The Chief may designate national conservation priority areas using the identified national program objectives and criteria. The Chief may receive nominations from Federal, State, or local government agencies, Indian tribes, or private groups or entities, and may consult with other Federal agencies in selecting national conservation priority areas. Consistent with maximizing the overall environmental benefits per dollar expended by the program, the Chief may designate national conservation priority areas under this part to provide technical assistance, cost-share payments, incentive payments, and education for producers to comply with nonpoint source pollution requirements, other Federal, State, tribal or local environmental laws, or to meet other conservation needs.

(2) NRCS will consider the following factors in deciding whether to designate a national conservation priority area in which program assistance will be provided:

(i) Condition of the natural resources;

(ii) Significance of the natural resource concern;

(iii) Improvements that NRCS expects will result from implementation of the conservation plan;

(iv) Expected number of producers who will participate and the time and financial commitment that the producers will provide;

(v) Estimated program cost to provide technical, educational, and financial assistance;

(vi) Level of coordination with and support from existing State and local programs, including private sources, and both direct and in-kind contributions;

(vii) Ways the program can best assist producers in complying with Federal, State, and tribal environmental laws, quantified where possible; and

(viii) Other factors that will assist CCC in maximizing the overall environmental benefit per dollar expended under this part.

(g) NRCS will establish program outreach activities at the national, State, and local levels in order to ensure that producers whose land has environmental problems and natural resource concerns are aware, informed, and know that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to limited resource producers, small-scale producers, Indian tribes, Alaska natives, and Pacific Islanders.

(h) NRCS State conservationists shall develop an education plan that describes the educational assistance that will be provided to enhance program participant's knowledge about conservation opportunities, will aid in implementing their conservation plan, and enhance environmental benefits that will be realized through implementation of the program. In the development of the education plan, NRCS will design a coordinated approach, including national, State, and local components depending on the similar or unique education needs identified. NRCS will encourage cooperation among education providers, such as the Extension system, conservation districts, State agencies, and other public and private education providers, as well as the use of existing educational resources, material, or programs that deal with natural resource related issues.

(i) The Chief, with FSA concurrence, will make funding decisions for national conservation priority areas, State-approved priority areas, and significant statewide natural resource concerns outside a funded priority area.

(1) After review of funding requests, the Chief may base funding decisions on an allocation process which considers:

(i) The significance of the environmental and natural resources conditions;

(ii) Factors used and considered in accordance with paragraphs (d) and (f) of this section;

(iii) The need to maximize environmental benefits per dollar expended;

(iv) The capability of the partners involved in the proposal to provide flexible technical, educational, and financial assistance;

(v) The conservation needs of farmers and ranchers in complying with the highly erodible land and wetland conservation provisions of part 12 of this title and Federal, State, and tribal environmental laws;

(vi) The opportunity for encouraging environmental enhancement;

(vii) The anticipated or proven performance of the partners involved in the proposal in delivering the program; and

(viii) Other relevant information to meet the purposes of the program as found in this part.

(2) In evaluating the considerations described in paragraph (i)(1) of this section, the Chief may consult other Federal agencies with the appropriate expertise and information.

(3) The approval of a priority area at the State level does not necessarily mean that funds will be allocated to that area. Funding may be allocated to a priority area for one or more years. Proposals that are not funded may be resubmitted to the Chief for subsequent review and consideration to determine if the resubmitted proposal meets Federal priorities for funding.

§ 1466.6 Conservation plan.

(a) The participant shall develop and submit a conservation plan for the farm or ranch unit of concern that, when implemented, protects the soil, water, or related natural resources in a manner that meets the purpose of the program, is acceptable to NRCS, and is approved by the conservation district. This plan forms the basis for an EQIP contract.

(1) When considering the acceptability of the plan, NRCS will consider whether the participant will use the most cost-effective conservation practices to solve the natural resource concerns and maximize environmental benefits per dollar expended.

(2) As determined by NRCS, the conservation plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the applicable NRCS field office technical guide, for the priority natural resource condition of concern in the priority area or the significant statewide natural resource concern outside a funded priority area.

(b) Upon a participant's request, the NRCS may provide technical assistance to a participant. NRCS may utilize the services of qualified personnel of cooperating Federal, State, or local agencies, Indian tribes, or private agribusiness sector or organizations, in performing its responsibilities for technical assistance. Participants may use the services of qualified non-NRCS professionals to provide technical assistance. NRCS retains approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining EQIP contract compliance.

(c) Participants are responsible for implementing the conservation plan. A participant may seek additional assistance from other public or private organizations or private agribusiness sector as long as the activities funded are in compliance with this part.

(d) All conservation practices scheduled in the conservation plan are to be carried out in accordance with the applicable NRCS field office technical guide.

(e) The conservation plan, or supporting documentation, for the farm or ranch unit of concern shall include:

(1) A description of the prevailing farm or ranch enterprises and operations that may be relevant to conserving and enhancing soil, water, or related natural resources;

(2) A description of relevant natural resources, including soil types and characteristics, rangeland types and conditions, proximity to water bodies, wildlife habitat, or other relevant characteristics related to the conservation and environmental objectives of the plan;

(3) A description of the participant's specific conservation and environmental objectives to be achieved;

(4) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and environmental objectives;

(5) A description of one or more conservation practices in the conservation management system to be implemented to achieve the conservation and environmental objectives;

(6) A description of the schedule for implementing the conservation practices, including timing and sequence; and

(7) Information that will enable evaluation of the effectiveness of the plan in achieving the conservation and environmental objectives.

(f) To simplify the conservation planning process for the participant, the conservation plan may be developed, at the request of the participant, as a single plan that incorporates, to the extent possible, any or all other Federal, State, tribal, or local government program or regulatory requirements. Participants do not need to replace existing plans developed by natural resource professionals if such plans meet the resource management objectives under this part. NRCS may accept an existing conservation plan developed and required for participation in any other USDA program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the EQIP contract. It is the responsibility of the participant to ascertain and comply with any and all applicable program or regulatory requirements, and the NRCS development or approval of a conservation plan shall not be deemed to constitute compliance with program or regulatory requirements administered or enforced by another agency.

§ 1466.7 Conservation practices.

(a)(1) The NRCS, with FSA consultation, shall provide guidance for determining structural, vegetative, and land management practices eligible for program payments. To be considered as an eligible conservation practice, the practices must provide beneficial, cost-effective approaches for participants to change or adapt operations to conserve or improve soil, water, or related natural resources or to provide for environmental enhancement.

(2) The designated conservationist, in consultation with the State technical committee or local work group, shall determine the conservation practices eligible for program payments for the priority area or for significant statewide natural resource concerns outside a priority area.

(3) Where new technologies or conservation practices that provide a high potential for maximizing the environmental benefits per dollar expended have been developed, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices at maximizing environmental benefits per dollars expended. NRCS may involve other entities in the pilot testing, including conservation districts, extension and research agencies and institutions, private agribusiness sector, and others.

(b)(1) CCC cannot provide cost-share assistance to construct an animal waste management facility on a large confined livestock operation. CCC may fund other structural, vegetative, or land management practices needed in the conservation management system to address the livestock-related natural resource concerns on a large confined livestock operation. Except as provided by paragraph (b)(2) of this section, CCC will consider a producer with confined livestock operations of more than 1,000 animal unit equivalents to be a large confined livestock operation and ineligible for financial assistance for construction of an animal waste management facility. When determining the number of livestock in the participant's operation for eligibility purposes, the total number of animals confined at all locations of the participant's livestock operation will be used.

(2) The NRCS State conservationist may develop a definition for a large confined livestock operation as it applies to that particular State using criteria recommended by the State technical committee. The criteria will consider but not be limited to such factors as:

(i) The cost-effectiveness of the facility and its potential to maximize environmental benefits per dollar expended;

(ii) The ability of the producer to pay for the cost of animal waste management facilities;

(iii) The significance of the natural resource concern resulting from the operation;

(iv) The prevailing State, Tribe, or local implementation of various Federal, Tribal, and State environmental laws and regulations, including regulations promulgated pursuant to the Clean Water Act (33 U.S.C. 1251 *et seq.*) and guidance developed under § 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1455b);

(v) The particular characteristics of modern livestock operations; and

(vi) The size of the operation in relation to other confined livestock operations in the State or region.

(3) The NRCS State conservationist, in consultation with the State technical committee, shall place emphasis on the considerations contained in paragraphs (b)(2)(i) and (b)(2)(ii) of this section when developing the criteria to define a large confined livestock operation.

(4) The definitions developed by NRCS State conservationists must be approved by the Chief, who will also provide oversight on their implementation. In approving the definitions the Chief will consider:

(i) The justification for the definition; and

(ii) The need for consistency in the definitions used between and among States, to the greatest extent possible.

(5) The Chief will report semiannually to the Secretary during the first two years of the program on the implementation of paragraph (b) of this section, including the impact that may have occurred to the environment and to the structure of livestock agriculture.

§ 1466.8 Technical and other assistance provided by qualified personnel not affiliated with USDA.

(a) A NRCS State conservationist may utilize technical and other assistance from qualified personnel of other Federal, State, and local agencies, or Indian tribes, and will encourage producers to use the most cost-effective technical assistance available, including if appropriate, using the services of the private agribusiness sector to carry out the assigned responsibilities of the program.

(b) Technical and other assistance provided by qualified personnel not affiliated with USDA may include, but is not limited to: conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists.

(c) NRCS shall provide technical coordination and leadership for the program, regardless of who provides technical and other assistance, and shall assure that the quality of the assistance obtained from other Federal, State, and local agencies, Indian tribes, and the private agribusiness sector is acceptable for purposes of this part. Non-NRCS assistance shall not be deemed to satisfy an EQIP contract entered into under subpart B of this part until the assistance has been approved by NRCS.

Subpart B—Contracts

§ 1466.20 Application for contracts and selecting offers from producers.

(a) Any producer who has eligible land may submit an application for participation in the EQIP to a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation.

(b) CCC will accept applications throughout the year. NRCS shall rank and select the offers of applicants periodically, as determined appropriate by NRCS after consultation with the State technical committee and on the recommendation of the local work groups.

(c) The designated conservationist, in consultation with the local work group, will develop ranking criteria to prioritize applications within a priority area. NRCS shall prioritize applications from the same EQIP-funded priority area using the criteria specific

to the area. The FSA county committee, with the assistance of the designated conservationist and the FSA county executive director, shall approve for funding the applications in a priority area based on eligibility factors of the applicant and the NRCS ranking.

(d) The NRCS State conservationist, in consultation with the State technical committee, and using quality criteria in the NRCS field office technical guide, will develop criteria to prioritize applications from applicants with significant statewide natural resource concerns outside a priority area. The FSA county committee, with assistance of the designated conservationist and FSA county executive director, shall approve for funding these applications based on the eligibility factors of the applicant and the NRCS ranking.

(e) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria. A participant has the option of offering and accepting less than the maximum program payments allowed.

(f) NRCS will rank all applications using criteria that will consider:

(1) The environmental benefits per dollar expended;

(2) A reasonable estimate of the cost of the conservation practices, the program payments that will be paid to the applicant, and other factors for determining which applications will present the least cost to the program;

(3) The environmental benefits that will be derived by applying the conservation practices in the conservation plan which will meet the purposes of the program;

(4) The extent to which the contract will assist the applicant in complying with Federal, State, tribal, or local environmental laws;

(5) Whether the land in the application is located in a priority area and the extent to which the contract will assist the priority area goals and objectives.

(g) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

§ 1466.21 Contract requirements.

(a) In order for a participant to receive cost-share or incentive payments, the participant shall enter into a contract agreeing to implement a conservation plan or portions thereof. FSA shall determine the eligibility of participants. The FSA county committee, with NRCS concurrence, shall use the NRCS ranking consistent with the provisions of § 1466.20 and grant final approval of a contract.

(b) An EQIP contract shall:

(1) Incorporate by reference all portions of a conservation plan applicable to EQIP;

(2) Be for a duration of not less than 5 years nor more than 10 years;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the contract;

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.25;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with the provisions of § 1466.24; and

(iv) Supply information as required by CCC to determine compliance with the contract and requirements of the program.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of § 1466.22; and

(5) Any other provision determined necessary or appropriate by CCC.

(c) The participant must apply a financially assisted practice within the first 12 months of signing a contract.

(d) There is a limit of one EQIP contract at any one time for each tract of agricultural land, as identified with a FSA tract number, determined at the

time of the application for EQIP assistance. Subject to the payment limitation set out elsewhere in this part, a participant may have subsequent EQIP contracts for different natural resource needs or concerns following completion of a previous EQIP contract on the same tract.

§ 1466.22 Conservation practice operation and maintenance.

The contract shall incorporate the operation and maintenance of conservation practices applied under the contract. The participant shall operate and maintain the conservation practice for its intended purpose for the life span of the conservation practice, as identified in the contract or conservation plan, as determined by CCC. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon, are to be operated and maintained as specified in the contract. NRCS may periodically inspect the conservation practice during the life span of the practice as specified in the contract to ensure that operation and maintenance is occurring.

§ 1466.23 Cost-share and incentive payments.

(a)(1) The maximum direct Federal share of cost-share payments to a participant shall not be more than 75 percent of the projected cost of a structural or vegetative practice. The direct Federal share of cost-share payments to a participant shall be reduced proportionately below 75 percent, or the cost-share limit as set in paragraph (a)(3) of this section, to the extent that total financial contributions for a structural or vegetative practice from all public and private entity sources exceed 100 percent of the projected cost of the practice.

(2) CCC shall provide incentive payments to participants for a land management practice in an amount and at a rate necessary to encourage a participant to perform the land management practice that would not otherwise be initiated without government assistance.

(3) CCC shall set the cost-share and incentive payment limits, as determined by:

(i) The designated conservationist, in consultation with the local work group and State technical committee, for a priority area; or

(ii) The NRCS State conservationist, in consultation with the State technical committee, for participants subject to environmental requirements or with significant statewide natural resource concerns outside a funded priority area.

(4) Cost-share payments and incentive payments may both be included in a contract.

(5) Cost-share and incentive payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the contract.

(b) Except as provided in paragraph (c) of this section, the total amount of cost-share and incentive payments paid to a person under this part may not exceed:

(1) $10,000 for any fiscal year; and

(2) $50,000 for any multi-year contract.

(c) To determine eligibility for payments, CCC shall use the provisions in 7 CFR part 1400 related to the definition of person and the limitation of payments, except that:

(1) States, political subdivisions, and entities thereof will not be persons eligible for payment.

(2) For purposes of applying the payment limitations provided for in this section, the provisions in part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment, will not apply.

(3)(i) The NRCS State conservationist may authorize, on a case-by-case basis, payments in excess of $10,000 in any fiscal year, up to the $50,000 limitation in paragraph (b) of this section. However, such increase in payments for a certain year shall be offset by reductions in the payments in subsequent years. A decision to approve payments in excess of the annual limit will consider whether:

(A) The practices in the system need to be applied at once so that the system is fully functioning to resolve the natural resource problem;

(B) The natural resource problem is so severe that resolving the problem immediately is needed;

(C) The producer needs to complete the practices in one year so that the farming operation is not interrupted or disturbed by the practice installation over a 5–10 year period; or

(D) The producer can install the practices at a lower total cost when installed in one year, thereby reducing the program payments.

(ii) With respect to land under EQIP contract which is inherited in the second or subsequent years of the contract, the $10,000 fiscal year limitation shall not apply to the extent that the payments from any contracts on the inherited land cause an heir, who was party to an EQIP contract on other lands prior to the inheritance, to exceed the annual limit.

(iii) With regard to contracts on tribal land, Indian trust land, or BIA allotted land, payments exceeding one limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the limitation.

(4) Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment.

(5) The status of an individual or entity on the date of application shall be the basis on which the determination of the number of persons involved in the farming operation is made.

(6) A participant shall not be eligible for cost-share or incentive payments for conservation practices on eligible land if the participant receives cost-share payments or other benefits for the same land under the Conservation Reserve Program (16 U.S.C. 3831–3836) or the Wetlands Reserve Program (16 U.S.C. 3837 *et seq.*).

(d) The participant and NRCS must certify that a conservation practice is completed in accordance with the contract before the CCC will approve the payment of any cost-share or incentive payments.

(e) CCC expenditures under a contract entered into during a fiscal year shall not be made until the subsequent fiscal year.

§ 1466.24 Contract modifications and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation plan is revised in accordance with NRCS requirements and is approved by the conservation district.

(b) The parties may agree to transfer a contract with the agreement of all parties to the contract. The transferee must be determined by CCC to be eligible and shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(c) CCC may require a participant to refund all or a portion of any assistance earned under EQIP if the participant sells or loses control of the land under an EQIP contract and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

§ 1466.25 Contract violations and termination.

(a)(1) If CCC determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, CCC shall give the participant a reasonable time, as determined by the FSA county committee, in consultation with NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the FSA county committee may, in consultation with NRCS, terminate the EQIP contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by the FSA county committee, in consultation with NRCS, that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1466.35, or in a case in

which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If CCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest determined in accordance with part 1403 of this chapter. The FSA county committee, in consultation with NRCS, has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, are not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If CCC terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. The FSA county committee, in consultation with NRCS, will have the option to waive the liquidated damages depending upon the circumstances of the case.

(3) When making all contract termination decisions, CCC may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if CCC agrees based on CCC's determination that termination is in the public interest.

(5) In carrying out its role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1466.30 Appeals.

(a) A participant may obtain administrative review of an adverse decision under EQIP in accordance with parts 11 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of State-approved priority areas, national conservation priority areas, or significant statewide natural resource concerns;

(3) NRCS funding allocations to States or priority areas;

(4) Eligible conservation practices; and

(5) Other matters of general applicability.

§ 1466.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1466.32 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1466.33 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the FSA county committee, in consultation with NRCS, may accept the

advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1466.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

PART 1467—WETLANDS RESERVE PROGRAM

Sec.

1467.1 Applicability.
1467.2 Administration.
1467.3 Definitions.
1467.4 Program requirements.
1467.5 Application procedures.
1467.6 Establishing priority for enrollment of properties in WRP.
1467.7 Enrollment of easements.
1467.8 Compensation for easements.
1467.9 Cost-share payments.
1467.10 Easement participation requirements.
1467.11 The WRPO development.
1467.12 Modifications.
1467.13 Transfer of land.
1467.14 Violations and remedies.
1467.15 Payments not subject to claims.
1467.16 Assignments.
1467.17 Appeals.
1467.18 Scheme and device.

AUTHORITY: 16 U.S.C. 590a *et seq.*, 3837 *et seq.*

SOURCE: 60 FR 28514, June 1, 1995, unless otherwise noted. Redesignated at 61 FR 42141, Aug. 14, 1996.

§ 1467.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Wetlands Reserve Program (WRP) as administered by the Natural Resources Conservation Service (Department) for program implementation and processing outstanding and new applications for enrollment during calendar year 1995 and thereafter.

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

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

§ 1467.2 Administration.

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

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of the WRP. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) As determined by the Chief and the Administrator of the Farm Service Agency, the Department and the Farm Service Agency will seek agreement in establishing policies, priorities, and guidelines related to the implementation of this part.

(d) The State Conservationist will consult with the State Technical Committee on the development of the rates of compensation for an easement, a priority ranking process, and related policy matters.

(e) The Department may delegate at any time easement management, monitoring, and enforcement responsibilities to other Federal or State agencies.

(f) The Department may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist the Department with educational efforts, easement management and monitoring, outreach efforts, and program implementation assistance.

(g) The Department shall consult with the U.S. Fish and Wildlife Service in the implementation of the program and in establishing program policies. The Department may consult with the Forest Service, other Federal or State agencies, conservation districts or other organizations in program administration. No determination by the U.S. Fish and Wildlife Service, the Forest Service, Federal or State agency, conservation district, or other organization shall compel the Department to take any action with the Department determines will not serve the purposes of the program established by this part.

(h) The Chief may allocate funds for such purposes related to: special pilot programs for wetland management and monitoring; acquisition of wetland easements with emergency funding; cooperative agreements with other Federal or State agencies for program implementation; coordination of easement enrollment across State boundaries; coordination of the development of conservation plans; or, for other goals of the WRP found in this part. The Department may designate areas as conservation priority areas where environmental concerns are especially pronounced and to assist landowners in meeting nonpoint source pollution requirements and other conservation needs.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, Aug. 14, 1996]

§ 1467.3 Definitions.

The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters, or alfalfa and other multi-year grasses and legumes in rotation as approved by the Secretary. Land shall be considered planted to an agricultural commodity during a crop year if, as determined by the Department, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for which the Farm Service Agency has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Conservation District is a subdivision of a State government organized pursuant to applicable State law to promote and undertake actions for the conservation of soil, water, and other natural resources.

Conservation Reserve Program (CRP) means the program administered by the Commodity Credit Corporation pursuant to 16 U.S.C. 3831–3836.

Contract means the document that specifies the obligations and rights of any person who has been accepted for participation in the program.

Converted wetland means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation, or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose, or that has the effect, of making the production of an agricultural commodity possible if such production would not have been possible but for such action.

Cost-share payment means the payment made by the Department to achieve the restoration of the wetland functions and values of the easement area in accordance with the WRPO.

Department means the United States Department of Agriculture (USDA) and includes the Commodity Credit Corporation or any USDA agency or instrumentality delegated program responsibility by the Secretary of Agriculture.

Easement means a reserved interest easement which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the grantee, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the WRP.

Farm Service Agency (FSA) is an agency of the United States Department of Agriculture.

Forest Service is an agency of the United States Department of Agriculture.

Landowner means a person or persons having legal ownership of farmland, including those who may be buying farmland under a purchase agreement. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a farm property.

Lands substantially altered by flooding means areas where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop wetland soil and vegetation characteristics over time.

Natural Resources Conservation Service (Department) is an agency of the United States Department of Agriculture, formerly called the Soil Conservation Service.

Permanent easement means an easement that lasts in perpetuity.

Person means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Practice means a restoration measure necessary or desirable to accomplish the desired program objectives.

Riparian areas means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegatative communities which are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in a State pursuant to 16 U.S.C. 3861. For the purposes of the WRP, the State Conservationist will be the chairperson of the State Technical Committee.

U.S. Fish and Wildlife Service is an agency of the United States Department of the Interior.

Wetland means land that:

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Does support a prevalence of such vegetation under normal circumstances. For purposes of WRP, wetland shall also refer to adjacent lands that contribute to wetland functions and values.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including:

(1) Habitat for migratory birds and other wildlife, in particular at risk species;

(2) Protection and improvement of water quality;

(3) Attenuation of water flows due to flood;

(4) The recharge of ground water;

(5) Protection and enhancement of open space and aesthetic quality;

(6) Protection of flora and fauna which contributes to the Nation's natural heritage; and

(7) Contribution to educational and scientific scholarship.

Wetland restoration means the rehabilitation of degraded or lost habitat in a manner such that:

(1) The original vegetation community and hydrology are, to the extent practical, re-established; or

(2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values but does not involve more than 30 percent of the wetland restoration area.

WRP means the Wetlands Reserve Program.

WRPO means the Wetlands Reserve Plan of Operations.

[60 FR 28514, June 1, 1995; 60 FR 33034, June 26, 1995. Redesignated and amended at 61 FR 42141, Aug. 14, 1996]

§ 1467.4 Program requirements.

(a) *General*. Under the WRP, the Department may purchase conservation easements from, or enter into restoration cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of wetlands and associated lands. To participate in WRP, a landowner will agree to the implementation of a Wetlands Reserve Plan of Operations (WRPO), the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. The Department may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner or other Department designee.

(b) *Acreage limitations*. (1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the Farm Service Agency, may be enrolled in the CRP and the WRP, and no more than 10 percent of the total cropland in the county may be subject to an easement acquired under the CRP and the WRP.

(2) The Department and the Farm Service Agency shall concur before a waiver of either the 25 percent limit or the 10 percent limit of this subsection can be approved for an easement proposed for enrollment in the WRP. Such a waiver will only be approved if it will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility*. The Department may determine that a person is not eligible to participate in the WRP or receive any WRP payment because the person did not comply with the provisions of 7 CFR part 12. To be eligible to enroll an easement in the WRP, a person must:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Have been the landowner of such land for the 12 months prior to the time the intention to participate is declared unless it is determined by the State Conservationist that the land was acquired by will or succession as a result of the death of the previous landowner, or that adequate assurances have been presented to the State Conservationist that the new landowner of such land did not acquire such land for the purpose of placing it in the WRP; and

(3) Agree to provide such information to the Department as the agency deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) *Eligible land*. (1) The Department shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of wetland functions and values when considering the cost of acquiring the easement and restoration, protection, enhancement, maintenance, and management costs.

(2) Land shall only be considered eligible for enrollment in the WRP if the Department determines, in consultation with the U.S. Fish and Wildlife Service, that:

(i) Such land maximizes wildlife benefits and wetland values and functions;

(ii) The likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program, taking into consideration the cost of such restoration; and

(iii) Such land meets the criteria of paragraph (d)(3) of this section.

(3) The following land may be eligible for enrollment in the WRP, which land may be identified by the Department pursuant to regulations and implementing policies pertaining to wetland conservation found at 7 CFR part 12, as:

(i) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and lands substantially altered by flooding so as to develop wetland functions and values;

(ii) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored;

(iii) Riparian areas along streams or other waterways that link or, after restoring the riparian area, will link wetlands which are protected by an easement or other device or circumstance that achieves the same objectives as an easement:

(iv) Land adjacent to the restored wetland which would contribute significantly to wetland functions and values including buffer areas, wetland creations, and non-cropped natural wetlands, but not more than the State Conservationist, in consultation with the State Technical Committee, determines is necessary for such contribution;

(v) Other wetlands that would not otherwise be eligible but would significantly add to the wetland functions and values; and

(vi) Wetlands that have been restored under a private, State, or Federal restoration program with an easement or deed restriction with a duration of less than 30 years.

(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(e) *Ineligible land.* The following land is not eligible for enrollment in the WRP:

(1) Converted wetlands if the conversion was commended after December 23, 1985;

(2) Land that contains timber stands established under a CRP contract or pasture land established to trees under a CRP contract.

(3) Lands owned by an agency of the United States;

(4) Land subject to an easement or deed restriction with a duration of 30 years or more prohibiting the production of agricultural commodities; and,

(5) Lands where implementation of restoration practices would be futile due to on-site or off-site conditions.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled into the WRP only if the land and landowner meet the requirements of this part, and the enrollment is requested by the landowner and agreed to by the Department. To enroll in WRP, the CRP contract for the property shall be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by the Farm Service Agency and the landowner.

[60 FR 28514, June 1, 1995; 60 FR 33034, June 26, 1995. Redesignated and amended at 61 FR 42141, Aug. 14, 1996]

§ 1467.5 Application procedures.

(a) *Application for participation.* To apply for enrollment, a landowner must submit an Application for Participation in the WRP. The application must be submitted during an announced period for such submissions.

(b) *Preliminary agency actions.* By filing an Application for Participation, the landowner consents to a Department representative entering upon the

land for purposes of assessing the wetland functions and values, and for other activities such as the development of the preliminary WRPO that are necessary or desirable for the Department to make offers of enrollment. The landowner is entitled to accompany a Department representative on any site visits.

(c) *Voluntary reduction in compensation*. In order to enhance the probability of enrollment in WRP, a landowner may voluntarily offer to accept a lesser payment than is being offered by the Department.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

§ 1467.6 Establishing priority for enrollment of properties in WRP.

(a) The Department shall place priority on the enrollment of those lands that will maximize wildlife values (especially related to enhancing habitat for migratory birds and other wildlife); have the least likelihood of re-conversion and loss of these wildlife values at the end of the WRP enrollment period; and that involve State, local, or other partnership matching funds and participation.

(b) *Ranking considerations*. Based on applications for participation, the State Conservationist, in consultation with the U.S. Fish and Wildlife Service and the State Technical Committee, will rank properties based on: estimated costs of restoration and easement acquisition, availability of matching funds, significance of wetland functions and values, estimated success of restoration measures, and the duration of a proposed easement with permanent easements being given priority over non-permanent easements.

(c) The Department may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve Department State and regional goals and objectives.

(d) Notwithstanding any limitation of this part, the State Conservationist may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. Similarly, the State Conservationist may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling to participate.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.7 Enrollment of easements.

(a) *Offers of enrollment*. Based on the priority ranking, the Department will notify an affected landowner of tentative acceptance into the program for which the landowner has 15 calendar days to sign a letter of intent to continue. Department will select lands to maximize environmental benefits per expenditure of Federal funds.

(b) *Effect of letter of intent to continue (enrollment)*. An offer of tentative acceptance into the program does not bind the Department or the United States to acquire an easement, nor does it bind the landowner to convey an easement or agree to WRPO activities. However, receipt of an executed letter of intent to continue will authorize the Department to proceed.

(c) *Acceptance of offer of enrollment*. A contract will be presented by the Department to the landowner, which will describe the easement area; the easement terms and conditions; and other terms and conditions for participation that may be required by the Department. A landowner accepts enrollment in the WRP by signing contract.

(d) *Effect of the acceptance of the offer*. After the contract is executed by Department and the landowner, the Department will proceed with various easement acquisition activities, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the WRPO.

(e) *Withdrawal of offers*. Prior to execution by the United States and the landowner of the contract, the Department may withdraw its offer anytime due to availability of funds, inability to clear title, or other reasons. The offer to the landowner shall be void if not executed by the landowner within the time specified. The date of the offer

shall be the date of notification to the landowner of tentative acceptance.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.8 Compensation for easements.

(a) *Establishment of rates.* (1) The State Conservationist, in consultation with the State Technical Committee, shall determine easement payment rates to be applied to specific geographic areas within the State or to individual easement areas.

(2) In order to provide for better uniformity among States, the Regional Conservationist and Chief may review and adjust, as appropriate, State or other geographically based easement payment rates.

(b) *Determination of easement payment rates.* (1) Easement payment rates will be based upon analyses of the values of the lands when used for agricultural purposes. The landowner will receive the lesser of the following:

(i) the geographic area rate;

(ii) the value based on a market appraisal analysis/assessment; or

(iii) the landowner offer.

(2) Each State Conservationist will determine the easement payment rates using the best information which is readily available in that State for assessing the values of land for agricultural purposes. Such information may include: soil types, type(s) of crops capable of being grown, production history, location, real estate market values, appraisals and market analyses, and tax rates and assessments. The State Conservationist may consult with other Federal agencies, real estate market experts, appraisers, local tax authorities, and other entities or persons which may provide information on productivity and market conditions.

(3) Easement payments for non-permanent easements will be less than those for permanent easements because the quality and duration of the ecological benefits derived from a non-permanent easement are significantly less than those derived from a permanent easement on the same land. Additionally, the economic value of the easement interests being acquired is less for a non-permanent easement than that associated with a permanent easement. An easement payment for the short-term 30-year easement shall not be less than 50 percent nor more than 75 percent of that which would have been paid for a permanent easement.

(c) *Maximum payments.* In order to ensure that limited program funds are expended to maximize program benefits, the State Conservationist, in consultation with the State Technical Committee, may establish a maximum easement payment for any one easement within a State or for geographic areas within a State.

(d) *Preliminary estimates of easement payments.* Upon request of the landowner prior to filing an application for enrollment, a landowner may be appraised of the maximum easement payment rates.

(e) *Acceptance of offered easement compensation.* (1) The Department will not acquire any easement unless the landowner accepts the amount of the easement payment which is offered by the Department. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2) Annual easement payments may be made in no less than 5 annual payments and no more than 30 annual payments of equal or unequal size.

(f) *Reimbursement of a landowner's expenses.* For completed easement conveyances, the Department will reimburse landowners for their fair and reasonable expenses, if any, incurred for surveying and related costs, as determined by the Department. The State Conservationist, in consultation with the State Technical Committee, may establish maximum payments to reimburse landowners for reasonable expenses.

(g) *Tax implications of easement conveyances.* Subject to applicable regulations of the Internal Revenue Service, a landowner may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the landowner. The Department disclaims any representations concerning the tax implications

of any easement or cost-share transaction.

(h) *Payment limitation on non-permanent easements.* With respect to non-permanent easements, the annual amount of easement payments to any person may not exceed $50,000 except for:

(1) Payments made pursuant to projects involving partnership funding or participation; or

(2) Payment received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special wetland and environmental enhancement program carried out by that entity that has been approved by Department.

(i) If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.9 Cost-share payments.

(a) The Department may share the cost with landowners of restoring the enrolled land as provided in the WRPO. The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of establishing or installing practices specified in the WRPO:

(1) On enrolled land subject to a permanent easement, the Department shall offer to pay not less than 75 percent nor more than 100 percent of such costs; and

(2) On enrolled land subject to a non-permanent easement or restoration cost-share agreement, the Department shall offer to pay not less than 50 percent nor more than 75 percent of such costs. Restoration cost-share payments offered by Department for the short-term, 30-year easements shall be 50 to 75 percent.

(b) Cost-share payments may be made only upon a determination by the Department that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the landowner or other designee.

(c) Cost-share payments may be made for the establishment and installation of additional eligible practices, or the maintenance or replacement of an eligible practice, but only if Department determines the practice is needed to meet the objectives of the easement, and the failure of the original practices was due to reasons beyond the control of the landowner.

(d) A landowner may seek additional cost-share assistance from other public or private organizations as long as the activities funded are in compliance with this part. In no event shall the landowner receive an amount which exceeds 100 percent of the total actual cost of the restoration.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.10 Easement participation requirements.

(a) To enroll land in WRP, a landowner shall grant an easement to the United States. The easement shall require that the easement area be maintained in accordance with WRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(b) For the duration of its term, the easement shall require, at a minimum, that the landowner, and the landowner's heirs, successors and assigns, shall cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the easement and with the terms of the WRPO. In addition, the easement shall grant to the United States, through the Department:

(1) A right of access to the easement area;

(2) The right to permit compatible uses of the easement area, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established;

(3) All rights, title and interest in the easement area subject to compatible uses reserved to the landowner; and,

(4) The right to perform restoration, protection, enhancement, maintenance, and management activities on the easement area.

(c) The landowner shall convey title to the easement which is acceptable to the Department. The landowner shall warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title which are deemed acceptable by the Department.

(d) The landowner shall:

(1) Comply with the terms of the easement;

(2) Comply with all terms and conditions of any associated contract;

(3) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area under any program administered by the Secretary, as determined by the Farm Service Agency;

(4) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(5) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area;

(6) Agree that each person who is subject to the easement shall be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.11 The WRPO development.

(a) The development of the WRPO shall be made through the local Department representative, in consultation with the State Technical Committee, and with consideration of site specific technical input from the U.S. Fish and Wildlife Service and the Conservation District.

(b) The WRPO shall specify the manner in which the enrolled land shall be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program. The WRPO shall be developed to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values will result.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.12 Modifications.

(a) *Easements.* (1) After an easement has been recorded, no modification will be made in the easement except by mutual agreement with the Chief and the landowner. The Chief will consult with the U.S. Fish and Wildlife Service and the Conservation District prior to making any modifications to easements.

(2) Approved modifications will be made only in an amended easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the wetland functions and values for which the easement was acquired.

(4) Modifications must result in equal or greater environmental and economic values to the United States.

(b) *WRPO.* Insofar as is consistent with the easement and applicable law, the State Conservationist may approve modifications to the WRPO that do not affect provisions of the easement in consultation with the landowner and the State Technical Committee and following consideration of site specific technical input from the U.S. Fish and Wildlife Service and the Conservation District. Any WRPO modification must meet WRP program objectives, and must result in equal or greater wildlife benefits, wetland functions and values, ecological and economic values to the United States. Modifications to the WRPO which are substantial and affect provisions of the easement will require agreement from the landowner and require execution of an amended easement.

[60 FR 28514, June 1, 1995; 60 FR 33034, June 26, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.13 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to the landowner acceptance into the program shall void the offer of enrollment. At the option of the State Conservationist, an offer can be extended to the new landowner if the new landowner agrees to the same or more restrictive easement and contract terms and conditions.

(b) *Payments to landowners.* (1) For easements with multiple annual payments, any remaining easement payments will be made to the original landowner unless the Department receives an assignment of proceeds.

(2) The new landowner or purchaser shall be held responsible for assuring completion of all measures and practices required by the contract. Eligible cost-share payments shall be made to the new landowner upon presentation of an assignment of rights or other evidence that title had passed.

(c) *Claims to payments.* With respect to any and all payments owed to landowners, the United States shall bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost-share payments, the Department may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

§ 1467.14 Violations and remedies.

(a) In the event of a violation of the easement or any contract directly involving the landowner, the landowner shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist may allow.

(b) Notwithstanding paragraph (a) of this section, the Department reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of the Department when such actions are deemed necessary to protect important wetland functions and values or others rights of the United States under the easement. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or contractual obligations.

(c) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, the Department may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(d) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

[60 FR 28514, June 1, 1995; 60 FR 33034, June 26, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

§ 1467.15 Payments not subject to claims.

Any cost-share or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1467.16 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1467.17 Appeals.

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action

except a decision of the Chief of Department under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by the Department in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the Department in accordance with applicable law.

[60 FR 28514, June 1, 1995, as amended at 60 FR 67316, Dec. 29, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

§ 1467.18 Scheme and device.

(a) If it is determined by the Department that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the Department.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A landowner who succeeds to the responsibilities under this part shall report in writing to the Department any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

PART 1468—CONSERVATION FARM OPTION

Subpart A—General Provisions

Sec.
1468.1 Purpose.
1468.2 Administration.
1468.3 Definitions.
1468.4 Establishing Conservation Farm Option (CFO) pilot project areas.
1468.5 General provisions.
1468.6 Practice eligibility provisions.
1468.7 Participant eligibility provisions.
1468.8 Land eligibility provisions
1468.9 Conservation farm plan.

Subpart B—Contracts

1468.20 Application for CFO program participation.
1468.21 Contract requirements.
1468.22 Conservation practice operation and maintenance.
1468.23 Annual payments.
1468.24 Contract modifications and transfers of land.
1468.25 Contract violations and termination.

Subpart C—General Administration

1468.30 Appeals.
1468.31 Compliance with regulatory measures.
1468.32 Access to operating unit.
1468.33 Performance based upon advice or action of representatives of CCC.
1468.34 Offsets and assignments.
1468.35 Misrepresentation and scheme or device.

AUTHORITY: 16 U.S.C. 3839bb.

SOURCE: 63 FR 51786, Sept. 29, 1998, unless otherwise noted.

Subpart A—General Provisions

§ 1468.1 Purpose.

(a) Through the Conservation Farm Option (CFO), the Commodity Credit Corporation (CCC) provides financial assistance to eligible farmers and ranchers to address soil, water, and related natural resource concerns, water quality protection or improvement; wetland restoration and protection; wildlife habitat development and protection; and other similar conservation purposes on their lands in an environmentally beneficial and cost-effective manner. The Natural Resources Conservation Service (NRCS) may provide technical assistance, upon request by the producer or landowner.

(b) The CCC provides a single contract and annual payments for implementation of innovative and environmentally-sound methods for addressing natural resource concerns for producers of wheat, feed grains, cotton, and rice, resulting in consolidation of payments that would have been available under the Conservation Reserve Program (CRP), the Wetlands Reserve Program cost-share agreements (WRP), and the Environmental Quality Incentives Program (EQIP). CFO participation is determined through two step

process: first, the Chief, with FSA concurrence, selects CFO pilot project areas based on proposals submitted by the public; then CCC accepts applications from eligible producers or owners within the selected pilot project area.

§ 1468.2 Administration.

(a) CFO is carried out using Commodity Credit Corporation funds and will be administered on behalf of CCC by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) as set forth below.

(b) NRCS will:

(1) Provide overall program management and implementation for CFO;

(2) Establish policies, procedures, priorities, and guidance for program implementation, including determination of pilot project areas;

(3) Establish annual payment rates consistent with EQIP, CRP, and WRP payment rates;

(4) Make funding decisions and determine allocations of program funds, with FSA concurrence;

(5) Determine eligibility of practices;

(6) Provide technical leadership for conservation planning and implementation, quality assurance, and evaluation of program performance.

(c) FSA will:

(1) Be responsible for the administrative processes and procedures including applications, contracting, and financial matters, such as payments to participants, assistance in determining participant eligibility, and program accounting; and

(2) Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes, and administrative and financial performance reporting.

(d) NRCS and FSA will cooperate in establishing program policies, priorities, and guidelines related to the implementation of this part.

(e) No delegation herein to lower organizational levels shall preclude the Chief of NRCS, or the Administrator of FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part that is the responsibility of their respective agencies.

§ 1468.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Applicant means a producer or owner in an approved pilot project area who has requested in writing to participate in CFO.

Chief means the Chief of NRCS, or designee.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation farm plan means a record of a participant's decisions, and supporting information for treatment of a unit of land or water as a result of the planning process, that meets the local NRCS Field Office Technical Guide (FOTG) criteria for each natural resource and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems, and take advantage of opportunities, at a conservation management system level. In the conservation farm plan, the needs of the client, the resources, and Federal, state, Tribal, and local requirements will be met.

Conservation practice means a specified treatment, such as structural, vegetative, or a land management practice, which is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in the program.

County executive director means the FSA employee responsible for directing and managing program and administrative operations in one or more FSA county offices.

Farm Service Agency county committee means a committee elected by the agricultural producers in the county or area, in accordance with Sec. 8(b) of

the Soil Conservation and Domestic Allotment Act, as amended, or designee.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The guide contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. A copy of the guide for that area is available at the appropriate NRCS field office.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Innovative technology means the use of new management techniques, specific treatments, or procedures such as structural or vegetative measures used in field trials or as interim conservation practice standards that have the purpose of solving or reducing the severity of natural resource use problems or that take advantage of resource opportunities. Innovative technologies used by program participants must be able to achieve the required level of resource protection.

Land management practice means conservation practices that primarily require site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, wildlife management, resource conserving crop rotations, cover crop management, and organic matter and carbon sink management.

Liquidated damages means a sum of money stipulated in the contract which the participant agrees to pay, in addition to refunds and other charges, if the participant breaches the contract, and represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Local work group means representatives of FSA, the Cooperative State Research, Education, and Extension Service (CSREES), the conservation district, and other Federal, State, and local government agencies, including Tribes and Resource Conservation and Development councils, with expertise in natural resources who consult with NRCS on decisions related to CFO implementation.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means an applicant who is a party to a CFO contract.

Secretary means the Secretary of the United States Department of Agriculture.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State technical committee means a committee established by the Secretary in a state pursuant to 16 U.S.C. 3861.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and quality assurance for professional conservationists; and evaluation and assessment of the program.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

§ 1468.4 Establishing Conservation Farm Option (CFO) pilot project areas.

(a) CCC may periodically solicit proposals from the public to establish pilot project areas in the FEDERAL REGISTER.

(b) Pilot projects may involve one or more participants. Each owner or producer within an approved pilot project area must submit an application in order to be considered for enrollment in the CFO. This pilot project area may be a watershed, a subwatershed, an area, or an individual farm that can be geographically described and has specific environmental sensitivities or significant soil, water, and related natural resource concerns. The pilot project area must have acreage enrolled in a production flexibility contract, which is authorized by the Agricultural Marketing and Transition Act of 1996. After these pilot project area proposals are received, the Chief, with FSA concurrence, will select proposals for funding.

(c) CCC will select pilot project areas based on the extent the individual proposal:

(1) Demonstrates innovative approaches to conservation program delivery and administration;

(2) Proposes innovative conservation technologies and system;

(3) Provides assurances that the greatest amount of environmental benefits will be delivered in a cost effective manner;

(4) Ensures effective monitoring and evaluation of the pilot effort;

(5) Considers multiple stakeholder participation (partnerships) within the pilot area;

(6) Provides additional non-Federal funding; and

(7) Addresses the following:

(i) Conservation of soil, water, and related natural resources,

(ii) Water quality protection or improvement,

(iii) Wetland restoration and protection, and

(iv) Wildlife habitat development and protection,

(v) Or other similar conservation purposes.

§ 1468.5 General provisions.

(a) Program participation is voluntary.

(b) Participation in the CFO is limited to producers of wheat, feed grains, cotton, or rice who have a production flexibility contract, in accordance with part 1412 of this chapter, on the farm enrolling in CFO and who are eligible for either CRP (7 CFR part 1410), EQIP (7 CFR part 1466), or WRP (7 CFR part 1467).

(c) The participant is responsible for the development of a conservation farm plan for the farm or ranch and may request assistance from NRCS or a third party in writing both the conservation farm plan and installing the practices outlined within the plan. Conservation practices in the conservation farm plan that would have been eligible for payment under CRP, EQIP, or cost-share agreements under WRP are eligible for CFO payment. The provisions for determining eligibility for payment and the calculation of payment under CFO will be similar to those specified for the eligible conservation practices under CRP, EQIP, or cost-share agreements under WRP. For land retirement payments, the CRP payment schedule in effect for the applicable soils at the time the CFO contract is signed will be utilized. CCC will provide annual payments to a participant for such conservation practices as specified in the time schedule set forth in the conservation farm plan.

§ 1468.6 Practice eligibility provisions.

(a) Practices may be eligible for payment under CFO if the conservation practice specified in the conservation farm plan is determined to be an eligible practice, as determined by the Chief, in accordance with:

(1) 7 CFR part 1410 for land retirement rental payments and practices that are eligible under CRP;

(2) 7 CFR part 1467 for wetland restoration or protection practices that are eligible under WRP; or

(3) 7 CFR part 1466 for conservation practices that are eligible under EQIP.

(b) For practices that are installed on retired land, the CRP cost-share rate for practices must be utilized.

§ 1468.7 Participant eligibility provisions.

Participants in the CFO must at the time of enrollment:

(a) Have a production flexibility contract in accordance with part 1412 of this chapter on the farm enrolling in CFO.

(b) Agree to forgo earning future payments under the Conservation Reserve Program authorized by part 1410 of this chapter, the Wetlands Reserve Program cost-share payments authorized by part 1467 of this chapter, and Environmental Quality Incentives Program authorized by part 1466 of this chapter, on the farm enrolled in the CFO for the term of the CFO contract.

(c) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(d) Have control of the land for the term of the proposed contract period;

(1) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control.

(2) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC with the written authorization by the landowner to apply the structural or vegetative practice.

(3) If the applicant is a landowner, the landowner is presumed to have control.

(e) Submit a proposed conservation farm plan to CCC that is in compliance with the terms and conditions of the program. To receive payment under the CFO, the participant must also meet the eligibility requirements, as determined by the Chief, in:

(1) 7 CFR part 1410 if the land retirement rental payment and practice determined eligible in accordance with § 1468.6(a);

(2) 7 CFR part 1467 if the wetland restoration or protection practice was determined eligible in accordance with § 1468.6(b), or

(3) 7 CFR part 1466, if the conservation practice was determined eligible in accordance with § 1468.6(c).

(4) Comply with the provisions at § 1412.304 of this chapter for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable.

(5) Supply information as required by CCC to determine eligibility for the program.

(6) Comply with all the provisions of the CFO contract which includes the conservation farm plan approved by the local conservation district.

§ 1468.8 Land eligibility provisions.

Land may be eligible for enrollment in CFO, if CCC determines that the farm or ranch is enrolled in a production flexibility contract, authorized by the Agricultural Marketing Transition Act of 1996 and if the land upon which the CFO conservation practice, will be applied is determined to be eligible land as determined by the Chief, in accordance with:

(a) 7 CFR part 1410, if the practice was determined an eligible land retirement rental payment and cost-share practice similar to CRP in accordance with § 1468.6(a);

(b) 7 CFR part 1467, if the practice was determined an eligible wetland restoration or protection practice similar to WRP in accordance with § 1468.6(b); or

(c) 7 CFR part 1466, if the practice was determined an eligible conservation practice similar to EQIP in accordance with § 1468.6(c).

§ 1468.9 Conservation farm plan.

(a) The conservation farm plan forms the basis of the CFO contract. Prior to contract approval, a conservation farm plan must be written and approved. In deciding whether to approve a conservation farm plan, CCC may consider whether:

(1) The participant will use conservation practices to solve the natural resource concerns that will maximize environmental benefits per dollar expended, and

(2) The conservation practice would have been eligible for enrollment in the

CRP, EQIP, or under the WRP cost-share agreements.

(b) The conservation farm plan for the farm or ranch unit of concern shall:

(1) Describe any resource conserving crop rotation, and all other conservation practices, to be implemented and maintained on the acreage that is subject to contract during the contact period;

(2) Address the resource concerns identified in the CFO pilot project area proposal;

(3) Contain a schedule for the implementation and maintenance of the practices described in the conservation farm plan;

(4) Ensure that net environmental benefits under a CRP contract are maintained or exceeded for the whole farm, as constituted by FSA, when terminating a CRP contract and enrolling in a CFO contract; and

(5) Meet the objectives of the pilot project area.

(c) The conservation farm plan is part of the CFO contract.

(d) The conservation farm plan must allow the participant to achieve a cost-effective resource management system, or some appropriate portion of that system, identified in the applicable NRCS field office technical guide or as approved by the State Conservationist.

(e) Participants are responsible for implementing the conservation farm plan in compliance with this part.

(f) Upon a participant's request, the NRCS may provide technical assistance to a participant.

(1) Participants may, at their own cost, use qualified professionals, other than NRCS personnel, to provide technical assistance. NRCS retains approval authority over the technical adequacy of work done by non-NRCS personnel for the purpose of determining CFO contract compliance.

(2) Technical and other assistance provided by qualified personnel not affiliated with NRCS may include, but not limited to: conservation planning; conservation practice survey, layout, design, and installation; information, education, and training for producers; and training and quality assurance for professional conservationists.

(g) All conservation practices scheduled in the conservation farm plan are to be carried out in accordance with the applicable NRCS Field Office Technical Guide. The State Conservationist may approve use of innovative conservation measures that are not contained in the NRCS Field Office Technical Guide.

(h)(1) To simplify the conservation planning process for the participant, the conservation farm plan may be developed, at the request of the participant, as a single plan that incorporates, other Federal, state, Tribal, or local government program or regulatory requirements. CCC development or approval of a conservation farm plan shall not constitute compliance with program, statutory and regulatory requirements administered or enforced by a non-USDA agency, except as agreed to by the participant and the relevant Federal, state, local or tribal entities.

(2) CCC may accept an existing conservation plan developed and required for participation in any other CCC or USDA program if the conservation plan otherwise meets the requirements of this part. When a participant develops a single conservation farm plan for more than one program, the participant shall clearly identify the portions of the plan that are applicable to the CFO contract. It is the responsibility of the participant to ascertain and comply with all applicable statutory and regulatory requirements.

Subpart B—Contracts

§ 1468.20 Application for CFO program participation.

(a) Any eligible owner or producer within an approved pilot project area may submit an application for participation in the CFO to a service center or other USDA county or field office(s) of FSA or NRCS, where the pilot project area is located.

(b) CCC will accept applications throughout the fiscal year. CCC will rank and select the offers of applicants periodically, as determined appropriate by the State Conservationist. The application period will begin after a pilot project area has been approved.

(c) The designated conservationist, in consultation with the local work group, will develop ranking criteria to

prioritize applications within a pilot project area which consists of more than one owner or producer. NRCS will prioritize applications from the same pilot project area using the criteria specific to the area. The FSA county committee, with the assistance of the designated conservationist and designated FSA official, will approve for funding the application in a pilot project area based on eligibility factors of the applicant and the NRCS ranking.

(d) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria. An applicant has the option of offering and accepting less than the maximum program payments allowed, offering to apply more conservation practices to the land in order to increase the likelihood of being enrolled. In evaluating the applications, the designated conservationist will take into consideration the following factors:

(1) Soil erosion;

(2) Water quality;

(3) Wildlife benefits;

(4) Soil productivity;

(5) Conservation compliance considerations;

(6) Likelihood to remain in conserving uses beyond the contract period, including tree planting and permanent wildlife habitat;

(7) State water quality priority areas;

(8) The environmental benefits per dollar expended; and

(9) The degree to which application is consistent with the pilot project proposal.

(e) If two or more applications have an equal rank, the application that will result in the least cost to the program will be given greater consideration.

§ 1468.21 Contract requirements.

(a) In order for an applicant to receive annual payments, the applicant must enter into a contract agreeing to implement a conservation farm plan. The FSA county committee, with NRCS concurrence, will use the NRCS ranking consistent with the provisions of § 1468.20 and grant final approval of the contract.

(b) A CFO contract will:

(1) Incorporate by reference all portions of a conservation farm plan applicable to CFO;

(2) Be for a duration of 10 years, and may be renewed, subject to the availability of funds, for a period not to exceed 5 years upon mutual agreement of CCC and the participant;

(3) Provide that the participant will:

(i) Not conduct any practices on the farm or ranch unit of concern consistent with the goals of the contract that would tend to defeat the purposes of the contract, or reduce net environmental and societal benefits;

(ii) Refund with interest any program payments received and forfeit any future payments under the program, on the violation of a term or condition of the contract, in accordance with the provisions of § 1468.25 of this part;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, in accordance with the provisions of § 1468.24 of this part;

(iv) Agree to forego participation in CRP, EQIP, and the cost-share agreements under WRP, along with future payments associated with these programs, with regard to the land under the CFO contract;

(v) Supply information as required by CCC to determine compliance with the contract and requirements of the program;

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices in accordance with the provisions of § 1468.22 of this part, and

(5) Include any other provision determined necessary or appropriate by CCC.

(c) There is a limit of one CFO contract at any one time for each farm, as constituted by FSA.

(d) The contract will incorporate the operation and maintenance of conservation practices applied under the contract, including those practices transferred from terminated CRP and EQIP contracts and WRP cost-share agreements. For persons wishing to transfer from CRP, EQIP, or WRP to CFO, practices included in CRP or

EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate, unless otherwise stated in the conservation farm plan.

(e) Acreage that is subject to a WRP easement will not be included in the CFO contract.

(f) Upon completion, the participant must certify that a conservation practice is completed in accordance with the conservation farm plan to establish compliance with the contract.

§ 1468.22 Conservation practice operation and maintenance.

(a) The participant will operate and maintain the conservation practice for its intended purpose for the life span of the conservation practice, as identified in the conservation farm plan. Conservation practices installed before the execution of a CFO contract, but needed in the contract to obtain the environmental benefits agreed upon, are to be operated and maintained as specified in the contract. NRCS may periodically inspect the conservation practice during the lifespan of the practice as specified in the contract to ensure that the operation and maintenance is occurring.

(b) For those persons who are signatories to existing CRP or EQIP contracts, or WRP cost-share agreements, practices will be transferred from EQIP and CRP contracts or WRP cost-share agreements, as agreed upon in the CFO conservation farm plan and CFO contract. Remaining rights and obligations under CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP, EQIP, or WRP will be incorporated into the new CFO contract. Practices included in CRP or EQIP contracts or WRP cost-share agreements must be included in a CFO contract if an owner or producer wishes to participate. Participants in CFO with CRP, EQIP, or WRP practices incorporated into CFO contracts are responsible for operating and maintaining these practices for the balance of the period specified in the original program contract, unless otherwise stated in the conservation farm plan and CFO contract.

§ 1468.23 Annual payments.

(a) CCC will determine annual payments, subject to the availability of funds, based on the value of the expected payments that would have been paid to the participant for that practice as specified in:

(1) Part 1410 of this chapter, if the practice is a land retirement rental payment or cost-share practice which would have qualified for payment under CRP in accordance with § 1468.6(a);

(2) Part 1467 of this chapter, if the practice is a wetland restoration or protection practice which would have qualified for payment under WRP which was determined eligible in accordance with § 1468.6(b);

(3) Part 1466 of this chapter, if the practice was a conservation practice which would have qualified for payment under EQIP which was determined eligible in accordance with § 1468.6(c);

(b) The maximum amount of annual payments which a person may receive under the CFO for any fiscal year shall not exceed the total of the amounts calculated in accordance with paragraph (a) of this section after being limited as follows:

(1) The payment calculated in accordance with paragraph (a)(1) of this section is limited in accordance with CRP payment limitation provisions set forth in part 1410 of this chapter.

(2) The payment calculated in accordance with § 1467.9(a)(2) of this chapter is not limited.

(3) The payment calculated in accordance with § 1466.23(a)(3) of this chapter is limited in accordance with EQIP payment limitation provisions in § 1466.23(b) of this chapter.

(c) The regulations set forth at part 1400 of this chapter will be applicable in making payment eligibility determinations for CFO and in making person determination as they apply to the limitation of payments determined in accordance with paragraph (b) of this section.

(d) The CCC cost-share payments to a participant shall be reduced so that total financial contributions for a structural or vegetative practice from all public and private entity sources do not exceed the cost of the practice.

(e) A landowner or producer that enrolls in CFO and terminates a CRP or EQIP contract or WRP cost-share agreement will be eligible to receive payments for practices which have been determined, established, or completed by the technical agency under those contracts or agreements. Once the CFO contract is effective, all payments for practices, including any practice transferred from the terminated contract agreement will be made under the CFO contract, except for payments already earned under prior contracts or cost-share agreements.

(f) Payments will not be made to a participant who has applied or initiated the application of a conservation practice for the purposes of CFO prior to approval of the CFO contract.

(g) When requested by the State Conservationist on a case-by-case basis, the Chief may approve, based upon availability of funding, cost share on the reapplication of a practice to replace or repair practice destroyed by unusual circumstances beyond the control of the landowner.

(h) The participant and NRCS must certify that a conservation practice is completed in accordance with the conservation farm plan to establish compliance with the contract before the CCC will approve the payment of any cost-share, incentive, or land retirement payment.

§ 1468.24 Contract modifications and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification and the conservation farm plan is revised in accordance with CCC requirements and is approved by the conservation district.

(b) The participant may agree to transfer a contract to another eligible owner or operator with the agreement of CCC. The transferee shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract. By agreeing to participate in CFO, CCC may require operation and maintenance of those conservation practices installed under CRP, EQIP, or WRP.

(c) CCC may require a participant to refund all or a portion of any assistance earned under a CRP or EQIP contract, or WRP cost-share agreement that was terminated as a condition of participation in CFO, if the participant sells or loses control of the land under a CFO contract and the new owner or controller does not assume responsibility under the contract.

§ 1468.25 Contract violations and termination.

(a)(1) If it is determined that a participant is in violation of the provisions of this part, or the terms of the contract including portions of the contract that incorporate transferred obligations from CRP or EQIP contracts, or WRP cost-share agreements, CCC will give the participant written notice of a reasonable time to correct the violation and comply with the terms of the contract and attachments thereto, as determined by the FSA county committee, in consultation with NRCS. If a participant continues in violation after the time to comply has elapsed, the FSA county committee may, in consultation with NRCS, terminate the CFO contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by the FSA county committee, in consultation with NRCS, that the participant has submitted false information, filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1468.35 of this part, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If CCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest, determined in accordance with part 1403 of this chapter. CCC has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed

under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If CCC terminates a contract for any reason stated above, before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract.

(3) When making all contract termination decisions, CCC may reduce the amount of money owed by the participant by a proportion which reflects the good-faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract without penalty, if CCC determines that such termination would be in the public interest.

Subpart C—General Administration

§ 1468.30 Appeals.

(a) An applicant or participant may obtain administrative review of an adverse decision made with respect to this part and the CFO contract in accordance with parts 11 and 614 of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

(1) CCC funding allocations;

(2) Eligible conservation practices;

(3) Payment rates, and cost-share percentages;

(4) Science-based formulas and factor values;

(5) Soils mapping and information; and

(6) Other matters of general applicability.

§ 1468.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1468.32 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, or as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this right to access.

§ 1468.33 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the FSA county committee, in consultation with NRCS, may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 1468.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States. The regulations governing offsets and withholdings found at part 1403 of this chapter shall apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1468.35 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) An applicant or participant who is determined to have knowingly adopted any scheme or device that tends to defeat the purpose of the program; made any fraudulent representation; or misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such applicant or participant with respect to CFO contracts.

PART 1469—WOOL AND MOHAIR PRICE SUPPORT PROGRAMS

Subpart A—Recourse Loan Regulations for Mohair

Sec.
1469.1 Applicability.
1469.2 Administration.
1469.3 Definitions.
1469.4 Eligibility.
1469.5 Application, availability, disbursement, and maturity.
1469.6 Security interests.
1469.7 Fees.
1469.8 Determination of quantity.
1469.9 Transfer of producer's interest prohibited.
1469.10 Loss or damage.
1469.11 Personal liability of the producer.
1469.12 Release of the mohair pledged as collateral for a loan.
1469.13 Liquidation of loans.
1469.14 Foreclosure.
1469.15 Handling payments and collections not exceeding $9.99.
1469.16 Death, incompetency, or disappearance; other regulations, additional loan provisions.
1469.17 Interest.

Subpart B—Wool and Mohair Market Loss Assistance Program

1469.101 Applicability.
1469.102 Administration.
1469.103 Definitions.
1469.104 Time and method of application.
1469.105 Eligibility.
1469.106 Payment rate and amount.
1469.107 Offsets.
1469.108 Appeals.
1469.109 Misrepresentation.
1469.110 Maintaining records.
1469.111 Estates, trust, and minors.
1469.112 Death, incompetency, or disappearance.
1469.113 Refunds; joint and several liability.

AUTHORITY: Pub. L. 105–277, 112 Stat. 2681; Sec. 801, Pub. L. 106–78, 113 Stat. 1135; Sec. 204(d), Pub. L. 106–224.

SOURCE: 64 FR 10930, Mar. 8, 1999, unless otherwise noted.

Subpart A—Recourse Loan Regulations for Mohair

§ 1469.1 Applicability.

The regulations of this part provide the terms and conditions under which the Commodity Credit Corporation (CCC) may issue recourse loans for mohair which was both produced during or before FY 1999 and 2000, and has remained continuously within the beneficial interest of the producer. Additional terms and conditions that must be followed to obtain a loan will be set forth in the applicable note and security agreements. All forms needed to obtain a loan will be available from State and county Farm Service Agency (State and county) offices.

[64 FR 10930, Mar. 8, 1999, as amended at 65 FR 7960, Feb. 16, 2000]

§ 1469.2 Administration.

(a) The regulations of this part shall be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out in the field by State and county committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, Farm Service Agency, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

(f) An approving official may execute loans and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void unless affirmed by the Executive Vice President, CCC.

§ 1469.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title shall also be applicable except where those definitions conflict with the definitions set forth in this section or in program instruments created under this part.

Administrator is the FSA Administrator.

Approving official is a representative of CCC who is authorized by the Executive Vice President, CCC, to approve loan documents prepared under this part.

CMA is a cooperative marketing association engaged in marketing mohair.

County office is the local FSA office.

FSA is the Farm Service Agency, United States Department of Agriculture.

Goat is an adult Angora goat or the kid of an Angora goat.

Loan is a recourse loan on mohair.

Loan quantity is the quantity on which the loan was disbursed, as shown on the note and security agreement.

Loan mohair is the quantity of mohair tendered by an eligible producer that is used in calculating the amount the loan.

Mohair is the hair sheared from a live goat before applying any process that removes the natural oils or fats or produces a mohair product. Mohair does not include pelts or hides or grease mohair shorn from pelts or hides, scoured, carbonized, or dyed mohair or yarn, skeins or other mohair which is identified for marketing by terms which identify the mohair as being other than in its natural greasy state.

Non-loan mohair is mohair securing a loan made under this part that was not used in calculating the amount of a loan made under this part.

Ownership is control, title, risk of loss, and the right to make all decisions regarding the tender of mohair to CCC for a loan or for marketing.

Person is the individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable a State, political subdivision of a State, or any agency thereof.

Program is the administration and issuance of a loan in accordance with the terms and conditions of this part and of any note and security agreement which must be executed by a loan recipient under this part.

Representative is a receiver, executor, administrator, guardian, or trustee representing the interests of a person or an estate.

State committee is the FSA committee so designated for the applicable state.

§ 1469.4 Eligibility.

(a) To be eligible to receive an individual or joint loan under this part, a person must:

(1) Own, other than through a security interest, mortgage, or lien, the goats that produced the mohair which is the basis for the loan sought under this part, which goats must be of domestic origin or imported for purposes other than for slaughter and which in all cases were located in the United States for a period of not less than 180

calendar days (excluding days in quarantine if imported) prior to shearing, except that kids younger than 180 calendar days must be located in the United States from birth to shearing;

(2) Share in the risk of raising and shearing the goats;

(3) Comply with subsection (h) of this section;

(4) Store the mohair pledged as loan collateral in a warehouse:

(i) In standard burlap wool and mohair bags identified by signed and dated receipts provided by the warehouse and other warehouse records, in which the warehouse certifies to CCC the name of the person requesting the loan, lot number, number of bags in storage, and net weight; and

(ii) Which has certified to CCC that it carries insurance to cover the stored mohair or can provide some other type of financial assurance;

(5) Adequately protect the interests of CCC by providing security for a loan in accordance with the requirements in §§ 1469.5 and 1469.6 which is superior to all other security interests and by maintaining in good condition the mohair pledged as security for a loan;

(6) Be accurate and truthful and not make any misrepresentations with respect to any information provided to CCC concerning any activity covered by this part;

(7) Not have been convicted of a crime as provided in part 718 of this title; and

(8) Not have received a loan or incentive payment under the previous mohair loan or payment program for a quantity of mohair pledged as loan collateral covered by this part, unless the full amount is repaid to CCC.

(b) Loan mohair must be mohair of merchantable quality deemed by CCC to be suitable for a loan and must have been shorn in the United States and not shorn while the producing goat was in quarantine.

(c) Two or more applicants may be eligible for a joint loan if:

(1) The conditions in paragraphs (a) and (b) of this section are met with respect to the commingled mohair they are tendering for a loan; and

(2) The commingled mohair is not used as collateral for an individual loan that has not been repaid.

(d) Heirs who succeed to a beneficial interest in the mohair are eligible for a loan if they:

(1) Assume the decedent's obligation under a loan if such loan has already been obtained; and

(2) Assure continued safe storage of the loan mohair if such mohair has been pledged as collateral for a loan.

(e) A representative may be eligible to receive a loan on behalf of a person or estate who or which meets the requirements in paragraphs (a), (b), (c), and (d) of this section, and the mohair tendered as collateral by the representative, in his capacity as a representative, shall be considered as tendered by the person or estate being represented.

(f) A minor who otherwise meets the requirements of this part for a loan shall be eligible to receive a loan only if the minor meets one of the following requirements:

(1) A court or statute has conferred the right of majority on the minor;

(2) A guardian has been appointed to manage the minor's property, and the applicable loan documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A surety, by furnishing a bond, guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(g) A CMA which the Executive Vice President, CCC, determines meets the requirements for CMA's in part 1425 of this title may be eligible to obtain a loan on behalf of those members who themselves are eligible to obtain a loan provided that:

(1) The beneficial interest in the mohair must always, until loan repayment or forfeiture, remain in the member who delivered the mohair to the eligible CMA or its member CMA's, except as otherwise provided in this part; and

(2) The mohair delivered to an eligible CMA shall establish eligibility for a loan if the member who delivered the mohair does not retain the right to share in the proceeds from the marketing of the mohair as provided in part 1425 of this title.

(h)(1) To be eligible to receive loans under this part a producer must have the beneficial interest in the mohair that is tendered to CCC for a loan. The producer must always have had the beneficial interest in the mohair unless, before the mohair was sheared, the producer and a former producer whom the producer tendering the mohair to CCC has succeeded had such an interest in the mohair. Mohair obtained by gift or purchase shall not be eligible to be tendered to CCC for loans. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan shall be eligible to receive loans whether succession to the mohair occurs before or after shearing so long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the mohair if the producer retains control, title, and risk of loss in the mohair including the right to make all decisions regarding the tender of such mohair to CCC for a loan, and the producer takes one of the following actions:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, with respect to such mohair if all other eligibility requirements are met and the option to purchase contains the following provision:

Not withstanding any other provision of this option to purchase, title, risk of loss, and beneficial interest in the mohair, as specified in 7 CFR part 1469, shall remain with the producer until the buyer exercises this option to purchase the mohair. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) the maturity of any CCC loan which is secured by such mohair; (2) the date the CCC claims title to such mohair; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the mohair if the producer retains title, risk of loss, and beneficial interest in the mohair and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.

(3) If loans are made available to producers through an approved CMA in accordance with part 1425 of this chapter, the beneficial interest in the mohair must always have been in the producer-member who delivered the mohair to the CMA or its member CMA's, except as otherwise provided in this section. Mohair delivered to such a CMA shall not be eligible for loans if the producer-member who delivered the mohair does not retain the right to share in the proceeds from the marketing of the mohair as provided in part 1425 of this chapter.

(i) A producer may, before the final date for obtaining a loan for mohair, re-offer as loan mohair any mohair that has been previously pledged and redeemed as loan mohair.

(ii) [Reserved]

[64 FR 10930, Mar. 8, 1999, as amended at 65 FR 7960, Feb. 16, 2000]

§ 1469.5 Application, availability, disbursement, and maturity.

(a) The deadline for requesting a loan offered under this part is September 30, 1999, for FY 1999 and September 30, 2000, for FY 2000.

(b) Loans mature on demand but not later than the last day of the twelfth calendar month following the month in which the note and security agreement was approved. When the final maturity date falls on a non-workday for county offices, CCC shall extend the final date to the next workday.

(c) A producer must request loans on mohair at the county office serving the county where the headquarters of the producer's farm, ranch, or feed lot is located. If the producer has more than one farm, ranch, or feed lot, with headquarters in more than one county, separate non-duplicative applications for loans may be filed with the county office serving each such headquarters covering only the mohair at each such location. A CMA must request loans at the county office for the county in which the principal office of the CMA is located unless the State committee designates another county office. If the CMA has operations in two or more States, the CMA must file its loan applications at the county office for the county in which its principal office for each State is located.

(d) Loans will be made on the mohair (i.e., adult, yearling, spring kid, fall kid) as declared and certified by the producer on Form CCC–633 (Mohair), (Mohair Loan Certification and Worksheet) at the time the mohair is pledged as collateral for a loan.

(e) CCC shall not approve a loan application until the producer provides adequate assurance that the loan and all related charges will be paid to CCC in accordance with paragraph (f) of this section. The disbursement of loans will be made by county offices on behalf of CCC.

(f) The loan rate under this part shall be $2 per pound for all mohair eligible to be pledged as collateral under this part. Until the loan and all related charges have been paid, CCC shall retain (and the producer shall agree that CCC shall retain) a first and superior security interest on all of the producer's current and future production of mohair, the security interest shall not be restricted to the mohair used in calculating the amount of the loan but shall cover all mohair (current and future) owned by the producer. Proceeds from the sale of loan mohair will be applied to the loan. Proceeds from the sale of non-loan mohair in which CCC holds a security interest will be applied to the loan only if the proceeds from the sale of the loan mohair are inadequate to pay the loan in full. The security interest shall also apply to the current and future mohair production of affiliated producers as defined in this part. CCC may require such additional security as it deems needed to assure repayment of the loan. In the event that the producer's present capability for producing mohair is such that a security interest on the producer's current and future production of mohair is not deemed to be sufficient, or if the loan is otherwise considered to be insufficiently secured, the CCC, as determined by the Executive Vice President, CCC, may require that 75 cents per pound, or such other amount as may be deemed appropriate by the Executive Vice President (taking into consideration the market value of the mohair) be deducted from the loan to provide additional security. Producers, in lieu of such reduction, may provide a letter of credit, bond, or other form of security for the reduction amount, as approved by CCC. The Executive Vice President, CCC, may allow for releases from the security interest provided for in this section as needed to accomplish the goals of the program, and require the necessary assurances to determine the future production capability of a producer seeking a loan under this part.

(g) If, after a loan is made, CCC determines that the producer or the mohair collateral is not in compliance with any of the provisions of this part, the producer shall refund the total amount disbursed under loan together with interest and other charges as may apply, including late payment interest as provided in part 1403 of this title.

[64 FR 10930, Mar. 8, 1999, as amended at 65 FR 7960, Feb. 16, 2000]

§ 1469.6 Security interests.

(a) CCC's security interest in the mohair pledged as collateral is first and superior to all other security interests.

(b) The county office may file or record, as required by State law, all financing statements needed to perfect a security interest in mohair pledged as collateral for loans. The cost of filing and recording shall be for the account of CCC.

(c) If there are any security interests or encumbrances on the mohair, waivers that fully protect the interest of CCC must be obtained. For non-loan mohair which is subject to the security interest provided for in this part, CCC may require waivers of pre-existing security interests.

§ 1469.7 Fees.

A producer shall pay a non-refundable loan service fee to CCC at a rate determined by CCC. The amount of such fees will be available in State and county offices.

§ 1469.8 Determination of quantity.

The amount of a loan on the quantity of eligible loan mohair shall be based on 100 percent of the net weight in pounds of such quantity certified by the producer and verified by the warehouse for mohair which is pledged as security for the loan and covered by the note and security agreement.

§ 1469.9 Transfer of producer's interest prohibited.

Absent written approval from CCC, the producer shall not transfer either the remaining interest in, or right to redeem, the mohair pledged as collateral for a loan nor shall anyone acquire such interest or right. Subject to the provisions of § 1469.12, a producer who wishes to liquidate all or part of a loan by contracting for the sale of the loan mohair must obtain written approval of the county office on a form prescribed by CCC to remove a specified quantity of the mohair from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office.

§ 1469.10 Loss or damage.

The producer is responsible for any loss in quantity or quality of the mohair pledged as collateral for a loan. CCC shall not assume any loss in quantity or quality of the loan collateral.

§ 1469.11 Personal liability of the producer.

(a) When applying for an individual or joint loan, each producer agrees:

(1) When signing any document, including Form CCC–633 (Mohair), (Mohair Loan Certification and Worksheet) and Form CCC–677 (Farm Storage Note and Security Agreement), that the producer will:

(i) Provide correct, accurate, and truthful certifications and representations of the loan quantity and all other matters of fact and interest; and

(ii) Not remove or dispose of any amount of the loan quantity without prior written approval from CCC in accordance with this section; and

(2) That violation of the terms and conditions of this part and Form CCC–677 will cause harm or damage to CCC in that funds may be disbursed to the producer for a loan quantity which is not actually in existence or for an amount of mohair for which the producer is not eligible.

(b) For purposes of this section, a ''violation'' shall refer to any violation of the loan agreement and this part which shall include, but not be limited to, any incorrect certification made with respect to obtaining a loan, any misrepresentation with respect to a loan, or any mis-disposition of loan collateral.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for conduct which is in violation of this part or the loan agreement. Accordingly, if the county committee determines that the producer has engaged in any such violation, liquidated damages shall be assessed and shall be due in addition to any loan refund that may be due plus interest and charges. The amount of such liquidated damages shall be computed using the quantity of mohair that is involved in the violation and the formula set out below. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity of mohair involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(d) When liquidated damages are assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity which was the subject of the violation plus charges, plus interest applicable to the amount repaid; and

(2) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan in its entirety, plus charges, plus interest assessed from the date of the loan disbursement.

(e) When liquidated damages are assessed in accordance with paragraph

(c)(2) of this section, the county committee shall call the loan in its entirety, plus charges, plus interest assessed from the date of the loan disbursement.

(f) The county committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) of this section if the county committee determines that the violation occurred inadvertently, accidentally, or unintentionally.

(2) Shall furnish a copy of its determination to the State committee, and the Administrator. If the determination of the county committee is not disapproved by either the State committee or the Administrator, or a designee, within 60 calendar days from the date the determination is received, such determination may be considered to have been approved unless the Administrator issues procedures that allow for more time, or decides in an individual case that more time is needed.

(g) If, there is any violation of the loan agreement or this part, the loan may be terminated in which case there must be a full refund of the loan plus interest, and costs.

(h) If the county committee determines that the producer has violated this part or the loan agreement, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee, and

(2) Administrative actions will be taken in accordance with paragraph (d) or (e) of this section.

(i)(1) If a producer makes any fraudulent or misleading representation in obtaining, maintaining, or settling a loan, the producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC with respect to the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation;

(iv) Late payment interest as may be provided for in part 1403 of this title; and

(v) Liquidated damages assessed under paragraph (c) of this section; and

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent or misleading representation to CCC, the value of the settlement for such collateral removed by CCC shall be determined by CCC according to § 1469.14.

(j) If the amount disbursed under a loan or in settlement thereof, exceeds the amount authorized under this part, the producer shall be personally liable for repayment of such excess, plus charges, plus interest, and for any other sanction as may be allowed by law.

(k) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency plus charges, plus interest.

(l) In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing or responsible under the loan note. Further, each producer who is a party to a joint loan will be jointly and severally liable for any violation of the terms and conditions of the note, security agreement, and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the mohair, or loan proceeds, after execution of the note and security agreement by CCC.

(m) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) of this section may be waived by CCC.

(n) Remedies set out here are in addition to remedies the CCC will have through its security interest on nonloan mohair which secures the repayment of the loan made on the loan mohair.

(o) All remedies provided for in this section or part are in addition to any remedies as may otherwise be provided for in law.

[64 FR 10930, Mar. 8, 1999, as amended at 65 FR 7960, Feb. 16, 2000]

§ 1469.12 Release of the mohair pledged as collateral for a loan.

(a)(1) A producer shall not move or dispose of any loan mohair pledged as collateral for a loan until prior written approval for such removal or disposition has been received from the county committee in accordance with this section.

(2) A producer may at any time obtain a release of all or part of the mohair remaining as loan collateral by paying to CCC the amount of the loan and any charges which had been made by CCC to the producer with respect to the quantity of the loan mohair released.

(3) When the proceeds of a sale of loan mohair are needed to repay all or part of a loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the mohair from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to any loan indebtedness. With respect to non-loan mohair securing the loan, CCC may, in its discretion, release its security interest in the mohair if there are no loan amounts overdue at the time of the release.

(b) The note and security agreement shall not be released until all loan liability has been satisfied in full.

(c) After satisfaction of a loan, CCC shall release CCC's security interest in the mohair at the producer's request. The producer shall be responsible for payment of any fee for such release if such fee can be determined.

§ 1469.13 Liquidation of loans.

(a)(1) For loans made in FY 1999, the producer is require to repay the loan on or before maturity by payment of the amount of loan, plus any charges.

(2) For loans made in FY 2000, the producer is required to repay the loan on or before maturity by payment of the amount of loan plus interest, as applicable, and any charges.

(b) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 calendar days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim shall be established for the loan amount plus interest and any charges. CCC shall inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title. A failure to pay the loan in a timely manner will start the accrual of late payment interest, and costs.

[65 FR 7961, Feb. 16, 2000]

§ 1469.14 Foreclosure.

(a) Upon maturity and nonpayment of the loan, title to the unredeemed loan mohair securing the loan shall vest in CCC.

(b) If the total amount due on a loan or the unpaid amount of the note and charges is not satisfied upon maturity, CCC may remove the loan mohair from storage and assign, transfer, and deliver the mohair or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine at a public or private sale. Any such disposition may also be effected without removing the mohair from storage. CCC may become the purchaser of the whole or any part of the mohair at either a public or private sale.

(c) If the mohair is removed from storage by CCC and is sold, the value of the settlement shall be the proceeds from the sale of the mohair minus costs associated with the disposition of the mohair, and:

(1) If the value of the collateral computed at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency plus charges, plus interest on such deficiency and CCC may take any action against the producer to recover the deficiency; or

(2) If the proceeds received from the sale of the loan mohair so computed are greater than the sum of the amount due, such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

(d) In addition, CCC may take any action with respect to non-loan mohair as may be needed to assure collection of all loans including, if need be, possession of the mohair. Nothing in this section of this part shall constitute a waiver of its lien on such mohair except when an express waiver has been executed by CCC. Absent such a waiver, all proceeds from such mohair shall be the property of CCC until the producer's loans have been repaid in full.

§ 1469.15 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less may be disregarded by CCC unless demand for payment is made by CCC.

§ 1469.16 Death, incompetency, or disappearance; other regulations, additional loan provisions.

(a) In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the county office which made the loan, be made to the persons who would be entitled to such producer's share under the regulations contained in part 707 of this title. Applications for loans may be made upon application of a representative of the producer as allowed under standard practice for farm programs.

(b) Appeals of adverse decisions made under this part shall be subject to the provisions of 7 CFR parts 11 and 780.

(c) The Executive Vice President, CCC, may impose such additional loan conditions as are determined to be necessary or appropriate to insure that the purposes and goals of the program provided for in this part are met.

§ 1469.17 Interest.

For loans made on or after October 1, 1999, through September 30, 2000, interest will accrue as provided in 7 CFR part 1405.

[65 FR 7961, Feb. 16, 2000]

Subpart B—Wool and Mohair Market Loss Assistance Program

SOURCE: 65 FR 65726, Nov. 2, 2000, unless otherwise noted.

§ 1469.101 Applicability.

The regulations of this subpart provide the terms and conditions under which the Commodity Credit Corporation (CCC) may make payments to wool and mohair producers for production from the 1999 marketing year.

§ 1469.102 Administration.

(a) The Wool and Mohair Market Loss Assistance Program shall be administered under the general supervision of the Executive Vice President, CCC, or designee and shall be carried out in the field by State and county Farm Service Agency committees (State and county committees) and FSA employees.

(b) State and county committees, and FSA employees, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation of this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or

failure to meet such other requirements does not adversely affect the operation of the Wool and Mohair Market Loss Assistance Program and does not violate statutory limitations on the program.

§ 1469.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Wool and Mohair Market Loss Assistance Program established by this subpart.

Administrator means the FSA Administrator.

Application means Form CCC–1155, the Wool and Mohair Market Loss Assistance Program Application.

Application period means October 10, 2000, through December 29, 2000.

CCC means the Commodity Credit Corporation.

County committee means the FSA county committee.

County office is the local FSA office.

Farm Service Agency or FSA means the Farm Service Agency of the United States Department of Agriculture.

Goat means an adult Angora goat or the kid of an Angora goat.

Grease mohair means mohair as it comes from the Angora goat or the kid of an Angora goat before applying any process to remove the natural oils or fats.

Grease wool means wool as it comes from the sheep or lambs before applying any process to remove the natural oils or fats.

Hide means thick tough skin of the animal.

Lamb means a young ovine animal that has not cut the second pair of permanent teeth. The term includes animals referred to in the livestock trade as lambs, yearlings, or yearling lambs.

Marketing year means a period beginning January 1, and ending the following December 31, both dates inclusive.

Mohair means the hair sheared from a live Angora goat before applying any process that removes the natural oils or fats or produces a mohair product. Mohair does not include grease mohair shorn from pelts or hides.

Pelt means the skin of the animal with wool still attached to the skin.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens, in the United States.

Producer means any person or group of persons who as a single unit produce wool or mohair and whose production and facilities are located in the United States.

Pulled mohair means mohair obtained from the pelts or hides of dead goat.

Pulled wool means wool obtained from the pelts or hides of dead sheep.

Shorn mohair means grease mohair sheared from a live Angora goat or the kid of an Angora goat. Shorn mohair does not include pelts, hides, or pulled mohair.

Shorn wool means grease wool sheared from live sheep or lambs. Shorn wool does not include pelts, hides, or pulled wool.

State committee is the FSA committee so designated for the applicable State.

United States means the 50 United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Wool means the hair sheared from a live sheep before applying any process that removes the natural oils or fats or produces a wool product. Wool does not include grease wool shorn from pelts or hides.

§ 1469.104 Time and method of application.

(a) Wool and mohair producers may obtain an application, Form CCC–1155 (Wool and Mohair Market Loss Assistance Program Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of Form CCC–1155 at *http://www.fsa.usda.gov/dafp/psd/*.

(b) A request for payments under this part must be submitted on a completed Form CCC–1155. Form CCC–1155 should be submitted to the FSA county office servicing the county where the producer is located but, in any case, must be received by the FSA county office by the close of business on December 29, 2000. Applications not received by

the close of business on December 29, 2000, will be returned as not having been timely filed and the producer will not be eligible for payments under this program.

(c) The wool and mohair producer requesting payments under this part must certify with respect to the accuracy and truthfulness of the information provided in their application for payments. All information provided is subject to a spot check by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program payments. Furnishing the data is voluntary; however, without it program payments will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

§ 1469.105 Eligibility.

(a) *Producers*. To be eligible to receive a payment under this subpart, a producer must:

(1) Have produced domestic wool and/or domestic mohair during the period of January 1, 1999, through December 31, 1999.

(2) Be engaged in the business of producing and marketing agricultural products at the time of filing the application; and

(3) Apply for payment during the application period.

(b) *Eligible wool and mohair*. (1) Wool and mohair is eligible to generate payments under this subpart only if the wool or mohair was produced by shearing live animals (not wool or mohair which is pulled or which is shorn from hides or pelts) and only if such shearing occurred in 1999 and in the United States.

(2) The producer applying for payment must have owned the wool or mohair at the time of shearing and must have owned in the United States the sheep, lambs, or goats from which the wool or mohair was shorn for 30 days or more at any time prior to shearing and actually owned the animal at the time of shearing.

§ 1469.106 Payment rate and amount.

(a) *Payment rate*.

(1) The payment rate for wool is 20 cents per pound.

(2) The payment rate for mohair is 40 cents per pound.

(b) *Payment amount*. The payment amount for wool or mohair will be calculated by multiplying the certified pounds by the payment rate.

§ 1469.107 Offsets.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the wool, the sheep, the mohair or the angora goats thereof, or proceeds thereof, in favor of the producer or any other creditors except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 shall be applicable to this part.

§ 1469.108 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

§ 1469.109 Misrepresentation.

(a) Whoever issues a false document or otherwise acts in violation of the provisions of this subpart so as to enable a producer to obtain a payment to which such producer is not entitled, shall become liable to CCC for any payment which CCC may have made in reliance on such sales document or as a result of such other action.

(b) The issuance of a false document or the making of a false statement in an application for payment or other document, for the purpose of enabling the producer to obtain a payment to which such producer is not entitled, may subject the person issuing such document or making such statement to liability under applicable Federal civil and criminal statutes.

§ 1469.110 Maintaining records.

Producers making application for a payment under this subpart must maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this subpart. Such records and accounts must be retained for 3 years after the date of payment to the producer under this subpart.

§ 1469.111 Estates, trust, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible producer of wool or mohair shall be eligible for assistance under this part only if such producer meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and has executed the applicable program documents; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1469.112 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a wool or mohair producer that is eligible to receive benefits in accordance with this part, such person or persons specified in 7 CFR part 707 may receive such benefits.

§ 1469.113 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application or this part, all payments made under this part to any producer shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in 7 CFR part 1403.

(b) All producers signing an application for payment as having an interest shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part.

(c) Interest shall be applicable to refunds required of any producer under this part if FSA determines that payments or other assistance were provided to a producer who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date FSA made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the producer.

(d) Interest determined in accordance with paragraph (c) of this section may not be waived on refunds required of the producer when there was no intentional misaction on the part of the producer, as determined by FSA.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 792.

(f) Producers must refund to FSA any excess payments made by FSA with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any producer, the benefit must be repaid with any applicable interest.

PART 1477—1998 SINGLE-YEAR AND MULTI-YEAR CROP LOSS DISASTER ASSISTANCE PROGRAM

Subpart A—General Provisions

Sec.

1477.101 Applicability.
1477.102 Administration.
1477.103 Definitions.
1477.104 Producer eligibility.
1477.105 Time for filing application.

1477.106 Limitations on payments and other benefits.
1477.107 Crop insurance premium discounts.
1477.108 Requirement to purchase crop insurance.
1477.109 Miscellaneous provisions.
1477.110 Matters of general applicability.

Subpart B—1998 Single-Year Crop Loss Disaster Assistance Program

1477.201 Single-year crop losses.
1477.202 Calculating rates and yields.
1477.203 Production losses, producer responsibility.
1477.204 Determination of production.
1477.205 Calculation of acreage for crop losses other than prevented planted.
1477.206 Calculation of prevented planted acreage.
1477.207 Quality adjustments to production.
1477.208 1999 crop losses.
1477.209 Value loss crops.
1477.210 Other specialty crops.

Subpart C—Multi-Year Crop Loss Disaster Assistance Program

1477.300 Multi-year crop losses.

AUTHORITY: Sec. 1101 and 1102 of Pub. L. 105–277, 112 Stat.2681; 15 U.S.C. 714b and 714c.

SOURCE: 64 FR 18554, Apr. 15, 1999, unless otherwise noted.

Subpart A—General Provisions

§ 1477.101 Applicability.

(a) This part sets forth the terms and conditions applicable to the 1998 Crop Loss Disaster Assistance Program. Under sections 1101 and 1102 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (''1999 Act'') (Pub. L. 105–277, 112 Stat. 2681), the Secretary of Agriculture will make disaster payments available to certain producers who have incurred losses in quantity or quality of their crops due to disasters. Producers will be able to receive benefits under this part for losses to 1998 crops, or losses occurring in at least 3 years for which payments were received for the period 1994 through 1998, as determined by the Secretary. Accordingly, this part contains three subparts. Subpart A contains general provisions applicable to both the single-year and multi-year aspects of the 1998 Crop Loss Disaster Assistance Program, which are contained in Subparts B and C, respectively.

(b) In accordance with section 1102(g)(2) of the 1999 Act, the Secretary has authorized use of a portion of the funds authorized by the Act to establish crop insurance premium discounts for the 1999 crop year (2000 crop year for citrus fruit, avocados in California, and macadamia nuts in Hawaii). This part establishes provisions and requirements for implementation of those discounts.

§ 1477.102 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Farm Service Agency (FSA) committees.

(b) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State FSA committee shall take any action required by this part which has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee which is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reverse any action which is not in accordance with this part.

(d) No delegation herein to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize the State and county committees to waive or modify deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program or when, in his discretion, it is determined that an exception should be allowed to provide for a more equitable distribution of benefits consistent with the goals of the program provided for in this part.

§ 1477.103 Definitions.

The definitions in this section shall be applicable for all purposes of administering the 1998 Crop Loss Disaster Assistance Program and all subparts of this part.

Actual production means the total quantity of the crop appraised, harvested or which could have been harvested as determined by the county or State FSA committee in accordance with instructions issued by the Deputy Administrator.

Additional coverage means with respect to insurance plans of crop insurance providing a level of coverage equal to or greater than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

Appraised production means production determined by FSA, RMA, FCIC, a company reinsured by FCIC, or other appraiser acceptable to CCC, that was unharvested but which was determined to reflect the crop's yield potential at the time of appraisal.

Approved yield means the amount of production per acre, computed in accordance with FCIC's Actual Production History Program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee. For crops covered under the Noninsured Crop Disaster Assistance program, the approved yield is established according to part 1437 of this title.

Aquaculture means the reproduction and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

Aquaculture facility means any land or structure including, but not limited to, a laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

Aquacultural species means aquacultural species as defined in part 1437 of this chapter.

CCC means the Commodity Credit Corporation.

Catastrophic risk protection means the minimum level of coverage offered by FCIC.

Catastrophic Risk Protection Endorsement means the relevant part of the Federal crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

Control county means: for a producer with farming interests in only one county, the county FSA office in which the producer's farm(s) is administratively located; for a producer with farming interests which are administratively located in more than one county FSA office, the county FSA office designated by FSA to control the payments received by the producer.

County committee means the local FSA county committee.

Crop of economic significance means a crop with a value equal to ten percent (10%) or more of the total value of the producer's share of all crops grown in the county for the relevant crop year. However, an amount will not be considered economically significant if the potential liability under the Catastrophic Risk Protection Endorsement is equal to or less than the administrative fee required with respect to such insurance for the crop, or, if applicable, the crop type or variety.

Crop insurance means an insurance policy reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended.

Cropland means cropland as defined in part 718 of this title.

Crop year means: for insured and uninsured crops, the crop year as defined according to the applicable crop insurance policy; and for noninsurable crops, the year harvest normally begins for the crop, except the crop year for all aquacultural species and nursery crops shall mean the period from October 1 through the following September 30, and the crop year for purposes of calculating honey and tree losses shall be the period running from January 1 through the following December 31.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Disaster means damaging weather, including drought, excessive moisture, hail, earthquake, freeze, tornado, hurricane, typhoon, volcano, excessive wind, excessive heat, or any combination thereof; and shall also include a related condition and all eligible loss conditions, excluding price risk for 1998 single-year losses, as determined by the crop insurance policy, if RMA has made an eligible loss determination.

Double-cropped means a condition in which a subsequent crop of a different commodity is planted on the same acreage as the first crop within the same crop year if the county committee determines both crops were or could have been carried to harvest.

End use means the purpose for which the harvested crop is used, such as fresh, processed or juice.

Entity means any legal organization or joint venture of any kind, including, but not limited to, corporations, trusts and partnerships.

Expected market price (price election) means the price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

Expected production means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

Final planting date means the date established by RMA for insured and uninsured crops by which the crop must be initially planted in order to be insured for the full production guarantee or amount of insurance per acre. For noninsurable crops, the final planting date is the end of the planting period for the crop as determined by CCC.

Flood prevention means with respect to aquacultural species, placing the aquacultural facility in an area not prone to flood; in the case of raceways, providing devices or structures designed for the control of water level; and for nursery crops, placing containerized stock in a raised area above expected flood level and providing draining facilities, such as drainage ditches or tile, gravel, cinder or sand base.

FSA means the Farm Service Agency.

Good nursery growing practices means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

Growing media means:

(1) For aquacultural species, media that provides nutrients necessary for the production of the aquacultural species and protects the aquacultural species from harmful species or chemicals; and

(2) For nursery crops, media designed to prevent ''root rot'' and other media-related problems through a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced.

Harvested means: For insured and uninsured crops, harvested as defined according to the applicable crop insurance policy; for noninsurable single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock; for noninsurable crops with potential multiple harvests in one year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field; and for mechanically harvested noninsurable crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor.

Historic yield means, for a unit, the higher of the county average yield or the producer's approved yield.

Individual stand means, with respect to trees, an area of eligible trees that are tended by an eligible producer as a single operation, whether or not the trees are planted in the same field or

similar location, as determined by the county committee. Eligible trees not in the same field or similar location may be considered to be separate individual stands if county committee determines that there are significantly differing levels of loss susceptibility.

Insurance is available means when crop information is contained in RMA's county actuarial documents for a particular crop and a policy can be obtained through the RMA system, except if the Group Risk Plan of crop insurance was the only plan of insurance available for the crop in the county in the 1998 crop year, insurance is considered not available for that crop.

Insured crops means those crops covered by crop insurance pursuant to 7 CFR Chapter IV and for which the producer purchased either the catastrophic or buy-up level of crop insurance so available.

Intended crop means an insured crop which the producer timely indicates for RMA insurance purposes as the crop the producer intends to produce.

Limited coverage means plans of crop insurance offering coverage that is equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC, but less than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

Multi-use crop means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and/or grazing.

Multiple planting means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

Noninsurable crops means those crops for which crop insurance was not available.

Normal mortality means the percentage of damaged or dead trees in the individual stand or the percentage of dead aquacultural species that would normally occur during the crop year.

Operator means operator as defined in part 718 of this title.

Palmer Drought Severity Index means the meteorological index calculated by the National Weather Service to indicate prolonged and abnormal moisture deficiency or excess.

Pass-through funds means revenue that goes through, but does not remain in, a person's account, such as money collected by an auction house for the sale of livestock which is subsequently paid to the sellers of the livestock, less a commission withheld by the auction house.

Person means person as defined in part 1400 of this chapter, and all rules with respect to the determination of a person found in that part shall be applicable to this part. However, the determinations made in this part in accordance with 7 CFR part 1400, subpart B, Person Determinations, shall also take into account any affiliation with any entity in which an individual or entity has an interest, irrespective of whether or not such entities are considered to be engaged in farming.

Planted acreage means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the area as determined by the county committee.

Producer means producer as defined in part 718 of this title.

Related condition means with respect to disaster, a condition related to a disaster that causes deterioration of a crop such as insect infestation, plant disease, or aflatoxin that is accelerated or exacerbated naturally as a result of damaging weather occurring prior to or during harvest as determined in accordance with instructions issued by the Deputy Administrator.

Reliable production records means evidence provided by the producer that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, that are determined acceptable by the county committee.

Repeat crop means with respect to a producer's production, a commodity that is planted or prevented from being

planted in more than one planting period on the same acreage in the same crop year.

RMA means the Risk Management Agency.

Salvage value means the dollar amount or equivalent received by the producer for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

Secondary use means the harvesting of a crop for a use other than the intended use, except for crops with intended use of grain, but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped.

Secondary use value means the value determined by multiplying the quantity of secondary use times the CCC-established price for this use.

Secretary means the Secretary of the United States Department of Agriculture.

Substitute crop means an alternative crop whose sales closing date has passed and that is planted on acreage that is prevented from being planted to an intended crop or where an intended crop is planted and fails.

Trees means maple trees for syrup, or orchard trees grown for commercial production of fruits or nuts.

Uninsured crops means those crops for which Federal crop insurance was available, but the producer did not purchase insurance.

Unit means, unless otherwise determined by the Deputy Administrator, basic unit as described in part 457 of this title which, for ornamental nursery production shall include all eligible plant species and sizes.

Unit of measure means:

(1) For all insured and uninsured crops, the FCIC-established unit of measure;

(2) For aquacultural species, a standard unit of measure such as gallons, pounds, inches or pieces, established by the State committee for all aquacultural species or varieties;

(3) For Christmas trees, a plant or tree;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon; and

(6) For all other crops, the smallest unit of measure which lends itself to the greatest level of accuracy with minimal use of fractions, as determined by the State committee.

United States means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

USDA means United States Department of Agriculture.

Value loss crop will have the meaning assigned in part 1437 of this chapter.

Verifiable production records means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

§ 1477. 104 Producer eligibility.

(a) Producers in the United States will be eligible to receive disaster benefits under this part only if they have suffered either:

(1) 1998 crop losses as a result of a disaster and as further specified in Subpart B; or

(2) Multi-year crop losses as a result of a disaster and as further specified in Subpart C.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title, for the year or years for which benefits are sought.

(d) The provisions of paragraph (c) of this section do not apply to producers receiving benefits under this part for value loss crops.

§ 1477.105 Time for filing application.

(a) Applications for benefits under Subpart B, the 1998 Crop Loss Disaster Assistance Program Single Year 1998 Losses, shall be filed before the close of

business on April 9, 1999, in the county FSA office serving the county where the producer's farm is located for administrative purposes.

(b) Applications for benefits under Subpart C, the1998 Crop Loss Disaster Assistance Program Multi-year Losses, shall be filed before the close of business on April 9, 1999, with the county FSA office designated as the producer's control county.

(c) The Deputy Administrator may grant general exceptions to these deadlines for filing applications.

§ 1477.106 Limitations on payments and other benefits.

(a) A producer may receive disaster benefits under either subpart B or C, but not both.

(b) A producer qualifying for disaster benefits under both subparts B or C, may receive whichever amount is greater as calculated according to this part.

(c) Payments will not be made under this subpart for grazing losses. Further, the Deputy Administrator may divide crops based on loss susceptibility, yield, and other factors.

(d) No person shall receive more than a total of $80,000 in disaster benefits under this part. No person shall receive more than $25,000 in disaster benefits under this part for tree losses.

(e) No person shall receive disaster benefits under this part in an amount that exceeds the value of the expected production for the relevant period as determined by CCC.

(f) A person who has a gross revenue in excess of $2.5 million for the 1997 tax year shall not be eligible to receive disaster benefits under this part. If the person does not have a 1997 tax year because the entities were dissolved in a prior year, the last tax year for the person will be used. Gross revenue includes the total income and total gross receipts of the person, before any reductions. Gross revenue shall not be adjusted, amended, discounted, netted or modified for any reason. No deductions for costs, expenses or pass-through funds will be deducted from any calculation of gross revenue. For making this determination, gross revenue means the total gross receipts received from farming or ranching operations if the person receives more than 50 percent of such person's gross income from farming or ranching; or the total gross receipts received from all sources if the person receives 50 percent or less of such person's gross receipts from farming and ranching.

(g) Payment eligibility under this part shall be in addition to whatever eligibility the producer may have to other payments including but not limited to:

(1) Payments under the noninsured crop disaster assistance program established under the Agricultural Market Transition Act (7 U.S.C. 7333);

(2) Crop insurance indemnities provided under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*);

(3) Emergency loans made available under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 *et seq.*);

(4) Payments received by a person for participation in a Production Flexibility Contract authorized under Title 1 of the Agricultural Market Transition Act (7 U.S.C. 7211 *et seq.*); and

(5) Market Loss Assistance payments made under § 1111 of the 1999 Act.

(h) In the event the total amount of applications for disaster benefits under this part exceeds the available funds, payments shall be reduced by a uniform national percentage. Such reductions shall be applied before any determination of limits on compensation due to multiple USDA benefits and after the imposition of applicable payment limitation and gross revenues caps.

§ 1477.107 Crop insurance premium discounts.

(a) A crop insurance premium discount is available to all producers who have limited or additional coverage crop insurance policies for the 1999 crop year (for the 2000 crop year for citrus fruit, Avocados in California, and Macadamia Nuts in Hawaii) as follows:

(1) Producers of crops that have sales closing dates for the 1999 crop year (2000 crop year for citrus fruit, avocados in California, and macadamia nuts in Hawaii) on or after July 31, 1998, and on or before February 15, 1999, must have by the following dates purchased

limited or additional coverage and submitted their acreage and production reports:

States	Application deadline	Production/acreage reporting date
Arizona, Florida, Georgia, Hawaii, Louisiana, Mississippi, and South Carolina.	February 28, 1999	April 15, 1999.
All other States	March 15, 1999	April 30, 1999.

(2) For crops with a final planting date on or after December 31, 1998, but before August 15, 1999, the acreage reporting date will be the later of the date shown in paragraph (a)(1) of this section or the acreage reporting date specified in the producer's crop insurance policy.

(3) For crops that have sales closing dates for the 1999 crop year (2000 crop year for citrus fruit, avocados in California, and macadamia nuts in Hawaii) after February 15, 1999, producers must purchase limited or additional coverage by the sales closing date for the applicable crop.

(b) Producers who are currently insured by the sales closing date for the applicable crop may not:

(1) Lower their insurance coverage or transfer to another insurance provider for crops with extended dates specified in paragraph (a)(1) of this section; or

(2) Cancel their insurance policy if the cancellation date has already passed, unless the producer is changing insurance plans at the same or a higher coverage level.

(c) Producers who are presently ineligible for crop insurance coverage due to a delinquent debt will be allowed to satisfy such debt and obtain coverage during the extended application period specified in paragraph (a)(1) of this section.

(d) The exact percentage for the crop insurance premium discount will be calculated once the total amount of premium for the 1999 crop year (2000 crop year for citrus fruit, avocados in California, and macadamia nuts in Hawaii) at the limited and additional coverage levels has been established.

(e) An additional crop insurance premium discount may be made available for any crops insured for the 1999 crop year by producers who have suffered multiple losses due to scab and/or vomitoxin damage as provided below; this discount is in addition to the premium discount referenced in paragraph (a) of this section and in order to qualify for this discount, a producer must:

(1) Have insured wheat, barley, oats, or rye in at least two crop years during the 1994 through 1998 crop years (A producer must provide evidence of such insurance if the insurance provider has no such record; and

(2) Provide evidence that wheat, barley, oats, or rye produced by the producer was subjected to a discounted price or decrease in yield due to scab or vomitoxin damage in at least two crop years during the 1994 through 1998 crop years.

(f) The two years of insurance specified in paragraph (e)(1) of this section, the two years of discounted prices or yields due to scab and/or vomitoxin specified in paragraph (e)(2) of this section, and the small grain crops affected need not be the same (e.g., a producer could have insured 1995 and 1996 wheat, but had scab and/or vomitoxin damage on 1997 and 1998 barley).

(g) This discount in paragraph (e) of this section can only be applied to the same identical producer that met the qualifications for the discount as required in paragraph (e) of this section.

(h) The total premium discounts allowed under this section to any person cannot exceed $80,000. The $2.5 million gross revenue limitation does not apply to the premium discounts specified in this section.

§ 1477.108 Requirement to purchase crop insurance.

(a) As required in 1102(g)(3) of the Act, any producer who receives crop loss assistance under this part who did not purchase crop insurance for all insurable crops for the 1998 crop year

(1999 crop year for citrus fruit, Avocados in California, and Macadamia Nuts in Hawaii) must purchase crop insurance for the 1999 and 2000 crop years (2000 and 2001 crop years for citrus fruit, avocados in California, and macadamia nuts in Hawaii) for all crops of economic significance produced by such producer for which insurance is available.

(b) Any producer who is required to purchase crop insurance in accordance with paragraph (a) of this section who does not purchase either limited or additional coverage by the sales closing date for the applicable crop or the extended application dates specified in section 1477.107(a)(1), may purchase catastrophic risk protection until April 28, 1999. Such producers will have until the following dates to provide their acreage and production reports:

(1) For policies under which the crop was planted on or before December 31, 1998, or the crop is a perennial crop, the producer must submit the acreage and production reports at the time of the Catastrophic Risk Protection application; or

(2) For spring crops, the acreage and production reports must be submitted by the later of May 29, 1999, or the latest spring acreage reporting date specified in the crop insurance policy.

(c) Nothing in this section supersedes the provisions contained in 7 CFR part 400, subpart T, relating to the availability of Catastrophic Risk Protection coverage whenever a producer is unable to plant the intended crop or it is not practical to replant a failed crop before the final planting date, and the producer plants a substitute crop.

(d) If any producer fails to purchase crop insurance as required in paragraph (a) of this section, the producer will be required to pay liquidated damages in an amount and within a reasonable period of time as determined by the Deputy Administrator.

§ 1477.109 Miscellaneous provisions.

(a) Disaster benefits under this part may be withheld using the standard set forth in § 1403.8(b) (1)–(7) of this chapter.

(b) No interest will be paid or accrue on disaster benefits under this part which are delayed or are otherwise not timely issued unless otherwise mandated by law.

(c) A person shall be ineligible to receive disaster assistance under this part if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device which tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(d) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (e) of this section and late-payment charges as provided for in part 1403 of this chapter.

(e) Producers shall be required to pay interest on any refund required of the producer receiving assistance or a payment if CCC determines that payments or other assistance were provided to the producer and the producer was not eligible for such assistance. The interest rate shall be one percent greater than the rate of interest which the United States Treasury charges CCC for funds, as of the date of payment. Interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date repayment is completed. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any error by the producer.

(f) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(g) In the event that any request for assistance or payment under this part was established as result of erroneous information or a miscalculation, the

assistance or payment shall be recomputed and any excess refunded with applicable interest.

(h) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(i) Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the regulations set forth at parts 11 and 780 of this title.

(j) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien again the crop, or proceeds thereof.

(k) Disaster benefits under this part may be made without taking any applicable offsets.

(l) Payments which are earned under this part may be assigned in accordance with the provisions of part 1404 of this chapter upon filling out the applicable assignment form.

(m) For the purposes of 28 U.S.C. 3201(e), the restriction on receipt of funds or benefits under this program is waived; however, this waiver shall not preclude withholding or offsetting where it is deemed by the Deputy Administrator to be appropriate.

[64 FR 18554, Apr. 15, 1999, as amended at 64 FR 58769, Nov. 1, 1999]

§ 1477.110 Matters of general applicability.

(a) For calculations of loss made with respect to insured crops, the producer's existing unit structure will be used as the basis for the calculation and may include optional units established according to 7 CFR Part 457 of this Title. For uninsured and noninsurable crops, basic units will be established for these purposes.

(b) Loss payment rates and factors shall be established by the state committee based on procedures provided by the Deputy Administrator.

(c) County average yield for loss calculations will be the simple average of the 1993 through 1997 official county yields established by FSA.

(d) County committees will assign production when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices that cause lower yields than those upon which the historic yield is based;

(3) The producer has a contract providing a guaranteed payment for all or a portion of the crop;

(4) The crop is planted beyond the normal planting period for the crop; or

(5) Other cause, as determined by the Deputy Administrator, exists for such case.

(e) The county committee shall establish a maximum loss level based on other losses in the county for the same crop. The maximum loss level for the county shall be expressed as either a percent of loss or yield per acre. The maximum loss level will apply when:

(1) Unharvested acreage has not been appraised by FSA, RMA, FCIC, a company reinsured by FCIC, or other appraiser;

(2) The crop's loss is because of an ineligible disaster condition or circumstances other than a natural disaster; or

(3) Acceptable production records for harvested acres are not available from any source.

(f) Assigned production for practices that result in lower yields than those for which the historic yield is based shall be established by:

(1) Determining the acres planted to the low-yielding type of practice;

(2) Multiplying the State office determined yield reduction factor times the county average yield; and

(3) Multiplying the result of paragraph (f)(2) of this section times the acres in paragraph (f)(1) of this section.

(g) Assigned production for crops planted beyond the normal planting period for the crop shall be calculated according to the lateness of planting the crop. If the crop is planted after the final planting date by:

(1) 1 through 10 calendar days, the assigned production will be based on one

percent of the payment yield for each day involved.

(2) 11 through 24 calendar days, the assigned production will be based on 10 percent of the payment yield plus an additional two percent reduction of the payment yield for each days of days 11 through 24 which are involved.

(3) 25 or more calendar days or a date in which the crop would not reasonably be expected to mature by harvest, the assigned production will be based on 50 percent of the payment yield or such greater amount determined by the county committee to be appropriate.

(h) Assigned production for producers with contracts to receive a guaranteed payment for production of an eligible crop will be established by the county committee by:

(1) Determining the total amount of guaranteed payment for the unit;

(2) Converting the guaranteed payment to guaranteed production by dividing the total amount of guaranteed payment by the approved county price for the crop or variety or such other factor deemed appropriate if otherwise the production would appear to be too high; and

(3) Establishing the production for the unit as the greater of the actual net production for the unit or the guaranteed payment.

[64 FR 18554, Apr. 15, 1999; 64 FR 35559, July 1, 1999]

Subpart B—1998 Single-Year Crop Loss Disaster Assistance Program

§ 1477.201 Single-year crop losses.

(a) To receive disaster benefits under this subpart which covers single-year 1998 crop losses, the county committee must determine that because of a disaster, the producer with respect to the 1998 crop year:

(1) Was prevented from planting a crop;

(2) Sustained a loss in excess of 35 percent of the expected production of a crop;

(3) Sustained a loss in excess of 35 percent of the value for value loss crops; or

(4) Sustained damage in excess of 20 percent of an individual stand of eligible trees, after adjustments for normal mortality.

(b) Calculation of benefits under this subpart shall not include losses:

(1) That are the result of poor management decisions or poor farming practices as determined by the county committee on a case-by-case basis based on instructions issued by the Deputy Administrator;

(2) That are the result of the failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant after a loss;

(3) That are not as a result of a natural disaster;

(4) To crops not intended for harvest in crop year 1998;

(5) To losses of by-products resulting from processing or harvesting a crop, such as cotton seed, peanut shells, wheat or oat straw;

(6) To home gardens; or

(7) As a result of water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected for the containment or release of the water.

(c) Calculation of benefits under this subpart for ornamental nursery stock shall not include losses:

(1) Caused by a failure of power supply or brownouts;

(2) Caused by the inability to market nursery stock as a result of quarantine, boycott, or refusal of a buyer to accept production;

(3) Caused by fire;

(4) Affecting crops where weeds and other forms of undergrowth in the vicinity of the nursery stock have not been controlled; or

(5) Caused by the collapse or failure of buildings or structures.

(d) Calculation of benefits under this subpart for honey where the honey production by colonies or bees was diminished, shall not include losses:

(1) Where the inability to extract was due to the unavailability of equipment; the collapse or failure of equipment or apparatus used in the honey operation;

(2) Resulting from improper storage of honey;

(3) To honey production because of bee feeding;

(4) Caused by the application of chemicals;

(5) Caused by theft, fire, or vandalism;

(6) Caused by the movement of bees by the producer or any other person; or

(7) Due to disease or pest infestation of the colonies.

§ 1477.202 Calculating rates and yields.

(a) Payment rates for 1998 single-year crop losses shall be:

(1) 65 percent of the maximum established RMA price for insured crops;

(2) 65 percent of the State average price for noninsurable crops;

(3) 60 percent of the maximum established RMA price for uninsured crops; and

(4) 65 percent of the established practice rate for damage to eligible trees.

(b) Disaster benefits under this subpart for losses to crops other than trees shall be made in an amount determined by multiplying the loss of production in excess of 35 percent of the expected production by the applicable payment rate established according to paragraph (a) of this section.

(c) Disaster benefits under this subpart for losses of trees shall be made in an amount determined by multiplying the quantity of acres or number of trees in a practice approved by the county committee according to instructions issued by the Deputy Administrator, by the payment rate established according to paragraph (a) of this section.

(d) Separate payment rates and yields for the same crop may be established according to instructions issued by the Deputy Administrator, when there is supporting data from NASS or other sources approved by CCC that show there is a significant difference in yield or value based on a distinct and separate end use of the crop. In spite of differences in yield or values, separate rates or yields shall not be established for crops with different cultural practices, such as organically or hydroponically grown.

(e) Each eligible producer's share of a disaster payment shall be based on the producer's share of the crop or crop proceeds, or, if no crop was produced, the share the producer would have received if the crop had been produced. In cases where crop insurance provides for a landlord/tenant to insure the tenant/landlord's share according to part 457 of this title, disaster payments will be issued on the same basis.

(f) When calculating a payment for a unit loss:

(1) The unharvested payment factor shall be applied to crop acreage planted but not harvested; and

(2) The prevented planting factor shall be applied to any prevented planted acreage eligible for payment.

(g) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

§ 1477.203 Production losses, producer responsibility.

(a) Where available, RMA loss records will be used for insured crops.

(b) If RMA loss records are not available, producers are responsible for:

(1) Retaining or providing, when required, the best verifiable or reliable production records available for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production; and

(4) Providing the information in a manner that can be easily understood by the county committee.

(c) In determining production under this section the producer must supply acceptable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, acceptable production records include: commercial receipts; settlement sheets; warehouse ledger sheets; or load summaries; appraisal information from a loss adjuster acceptable to CCC. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of in means other than commercial channels, acceptable production records include: truck scale tickets; appraisal information from a loss adjuster acceptable to CCC; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

(d) Producers must provide all records for any production of a crop

which is grown with an arrangement, agreement, or contract for guaranteed payment. The failure to report the existence of any guaranteed contract or similar arrangement or agreement shall be considered as providing false information to CCC.

§ 1477.204 Determination of production.

(a) Production under this subpart shall include all harvested production, unharvested appraised production and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year shall include the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested, the actual harvested production shall be used to determine benefits.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent according to instructions issued by the Deputy Administrator.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated for each use.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and market price, 60 percent, if insured or noninsurable, or 65 percent, if uninsured, of the salvage value received will be deducted from the disaster payment.

(g) If a producer has an arrangement, agreement, or contract for guaranteed payment for production (as opposed to production based on delivery), the production to count shall be the greater of the actual production or the guaranteed payment converted to production according to instructions issued by the Deputy Administrator.

(h) Production that is commingled between units before it was a matter of record and cannot be separated by using records or other means acceptable to CCC shall be prorated to each respective unit according to instructions issued by the Deputy Administrator. Commingled production may be attributed to the applicable unit, if the producer made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee shall assign production for the unit when the county committee determines that:

(1) The producer has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this subpart, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The producer carries out a practice, such as double cropping, that generally results in lower yields than the established historic yields;

(4) The producer has a contract to receive a guaranteed payment for all or a portion of the crop; or

(5) A crop is late-planted.

(j) For sugarcane, the quantity of sugar produced from such crop shall exclude acreage harvested for seed.

(k) For peanuts, the actual production shall be all peanuts harvested for nuts regardless of their disposition or use as adjusted for low quality.

(l) For tobacco, except flue-cured and burley, the actual production shall be the sum of the tobacco: marketed or available to be marketed; destroyed after harvest; and produced but unharvested, as determined by an appraisal. For flue-cured and burley tobacco, the actual production shall be the sum of the tobacco: marketed, regardless of whether the tobacco was produced in the current crop year or a prior crop year; on hand; destroyed after harvest; and produced but

unharvested, as determined by an appraisal.

§ 1477.205 Calculation of acreage for crop losses other than prevented planted.

(a) Subject to paragraph (b) of this section, the acreage of a crop planted in each planting period shall be considered a different crop for the purpose of determining disaster benefits under this subpart.

(b) In cases where there is a repeat crop, double crop or a multiple planting, each of these crops may be considered different crops if the county committee determines that:

(1) Both the initial and subsequent planted crops were planted with an intent to harvest;

(2) The subsequent crop was planted after the time when the initial crop would normally have been harvested;

(3) Both the initial and subsequent planted crops were planted within the normal planting period for that crop; and

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices.

(c) In cases where an initial crop is planted and fails due to an eligible disaster condition and it is generally considered too late to replant and a subsequent crop is planted on the same acreage within its normal planting period in the same crop year and also failed because of an eligible disaster condition, both crops are eligible for disaster assistance if they meet all other eligibility provisions of this part.

§ 1477.206 Calculation of prevented planted acreage.

(a) When determining losses under this subpart, prevented-planted acreage will be considered separately from planted acreage of the same crop.

(b) Except as provided in paragraph (c) of this section, for insured crops, disaster payments under this subpart for prevented-planted acreage shall not be made unless RMA documentation indicates that the eligible producer received a prevented planting payment under the RMA-administered program.

(c) For insured crops, disaster payments under this subpart for prevented-planted acreage will be made available for the following crops for which prevented planting coverage was not available and for which the county committee will make an eligibility determination according to paragraph (d) of this section: California safflowers; peanuts; peppers; popcorn; Central/Southern potatoes; sweet corn (fresh market); tomatoes (fresh market); tomatoes (processing).

(d) For uninsured or noninsurable crops, or the insured crops listed in paragraph (c) of this section, the producer must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the producer was prevented from planting the crop by an eligible disaster that both:

(1) Prevented most producers from planting on acreage with similar characteristics in the surrounding area; and

(2) Unless otherwise allowed by the Deputy Administrator, began no earlier than the planting season for the 1998 crop.

(e) Prevented planted disaster benefits under this subpart shall not apply to:

(1) Aquaculture, including ornamental fish; perennial forage crops grown for hay, seed, or grazing; ginseng root and ginseng seed; honey; maple sap; millet; nursery crops; sweet potatoes; tobacco; trees; turfgrass sod; and tree and vine crops;

(2) Any acreage which is double-cropped, even if the producer has a history of double-cropping acreage;

(3) Uninsured crop acreage that is unclassified for insurance purposes;

(4) Acreage that is used for conservation purposes or intended to be left unplanted under any USDA program;

(5) The same acreage from which any benefit is derived under any program administered by the USDA on which a crop is planted and fails during the crop year except as provided in 1477.106(f) of this part;

(6) Any acreage on which a crop other than a cover crop was harvested, hayed, or grazed during the crop year;

(7) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year unless

the county committee determines the lease was for haying and grazing rights only and was not a lease for use of the land;

(8) Acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(9) Acreage for which the producer or any other person received a prevented planted payment for any crop for the same acreage, excluding share arrangements; and

(10) Acreage for which the producer cannot provide proof to the county committee that inputs such as seed, chemicals, and fertilizer were available to plant and produce a crop with the expectation of at least producing a normal yield.

(f) Disaster benefits under this subpart shall not apply to acreage where the prevented-planted acreage was affected by a disaster that was caused by drought or the failure of the irrigation water supply unless the acreage is in an area classified by the Palmer Drought Severity Index as in a severe or extreme drought during the time period specified by the producer.

(g) For uninsured or noninsurable crops and the insured crops listed in paragraph (c) of this section, for prevented planting purposes:

(1) The maximum prevented-planted acreage for all crops:

(i) Cannot exceed the number of acres of cropland in the unit for the crop year; and

(ii) Will be reduced by the number of acres planted in the unit;

(2) The maximum prevented planted acreage for a crop cannot exceed the number of acres planted by the producer, or which was prevented from planting, to the crop in any 1 of the 1994 through 1997 crop years as determined by the county committee;

(3) For crops grown under a contract specifying the number of acres contracted, the prevented-planted acreage is limited to the result of the number of acres specified in the contract minus planted acreage;

(4) For each crop type or variety for which separate prices or yields are sought for prevented-planted acreage, the producer must provide evidence that the claimed prevented-planted acres were successfully planted in at least 1 of the most recent 4 crop years; and

(5) The prevented planted acreage must be one contiguous block consisting of at least 20 acres or 20 percent of the intended planted acreage in the unit, whichever is less.

§ 1477.207 Quality adjustments to production.

(a) Subject to paragraph (b) of this section, the quantity of production of crops that were damaged due to disaster resulting in diminished quality, shall be adjusted by the county committee in accordance with instructions issued by the Deputy Administrator.

(b) Crops eligible for quality adjustments to production are limited to:

(1) Barley; canola; corn; cotton; flaxseed; grain sorghum; mustard seed; oats; peanuts; rapeseed; rice; safflower; soybeans; sugar beets; sunflower-oil; sunflower-seed; tobacco; wheat; and

(2) Crops with multiple market uses such as fresh, processed or juice, as supported by NASS data or other data determined acceptable in accordance with instructions issued by the Deputy Administrator. RMA loss production figures will not be used to conduct this quality adjustment unless the Deputy Administrator determines otherwise.

(c) The producer must submit documentation for determining the grade and other discount factors that were applied to the crop.

(d) Quality adjustments will be applied after production has been adjusted to standard moisture, when applicable.

(e) Except for cotton, if a quality adjustment has been made for multi-peril crop insurance purposes, an additional adjustment will not be made.

(f) Quality adjustments for crops, other than cotton, peanuts, sugar beets and tobacco, listed in paragraph (b)(1) of this section may be made by applying an adjustment factor based on dividing the Federal marketing assistance loan rate applicable to the crop and producer determined according to part 1421 of this chapter by the unadjusted county marketing assistance loan rate for the crop. For crops that grade sample and are marketed through normal channels, production

will be adjusted according to instructions issued by the Deputy Administrator. County committees may, with state committee concurrence, establish county average quality adjustment factors according to procedures issued by the Deputy Administrator.

(g) Quality adjustments for cotton shall be based on the difference between:

(1) The loan rate applicable to the crop and producer determined according to part 1427 of this chapter; and

(2) The adjusted county loan rate. The adjusted county rate is the county loan rate adjusted for the 4-year county average historical quality premium or discount, in accordance with instructions issued by the Deputy Administrator.

(h) Quality adjustments for quota peanuts shall for unused quota be based on the difference between the adjusted sales price and the quota price. The adjusted sales price is the quota price minus discounts for quality, regardless of the actual sales price received. Adjustments for other peanuts may be made as determined appropriate by the Deputy Administrator.

(i) Quality adjustments for sugar beets shall be based on sugar content. The 1998 actual production for the producer shall be adjusted upward or downward to account for sugar content according to instructions issued by the Deputy Administrator.

(j) Quality adjustments for tobacco shall be based on the difference between the sales price and the support price.

(k) Quality adjustments for crops with multiple market uses such as fresh, processed and juice, shall be applied based on the difference between the producer's historical marketing percentage of each market use compared to the actual percentage for 1998, as determined in accordance with instructions issued by the Deputy Administrator.

(l) Quality adjustments for aflatoxin shall be based on the aflatoxin level. The producer must provide the County Office with proof a price reduction because of aflatoxin. The aflatoxin level must be 20 parts per billion or more before a quality adjustment will be made. The quality adjustment factor applied to affected production is .50 if the production is marketable. If the production is unmarketable due to aflatoxin levels of at least 20 parts per billion, production will be adjusted to zero. Any value received will be considered salvage.

(m) Any quantity of the crop determined to be salvage will not be considered production. Salvage values shall be factored by .60 for insured and noninsurable commodities and .65 for uninsured commodities.

(n) Quality adjustments do not apply to value loss crops.

(o) Quality adjustments shall not apply to: hay, honey, maple sap, turfgrass sod, crops marketed for a use other than an intended use for which there is not an established county price or yield.

§ 1477.208 1999 crop losses.

(a) Producers have the option to receive benefits on 1999 crop rather than 1998 loss when both the following apply:

(1) The 1999 crop was affected by disaster-related conditions that occurred in calendar year 1998; and

(2) Harvest for the 1999 crop would normally begin in calendar year 1998.

(b) Producers may elect to use the 1999 crop for 1998 single-year CLDAP benefits only.

§ 1477.209 Value loss crops.

(a) Special provisions to assess losses and calculate disaster assistance under this subpart apply to the following crops and such other crops as may be identified in instructions issued by the Deputy Administrator: ornamental nursery; Christmas trees; ginseng root; and aquaculture, including ornamental fish.

(b) Disaster benefits under this subpart are calculated based on the loss of value at the time of disaster, as provided by instructions issued by the Deputy Administrator.

(c) For aquaculture, disaster benefits under this subpart for aquacultural species are limited to those aquacultural species which were placed in the aquacultural facility by the producer. Disaster benefits under this subpart shall not be made available for aquacultural species that are growing

naturally in the aquaculture facility. Disaster benefits under this subpart are limited to aquacultural species that were planted or seeded on property owned or leased by the producer where that land has readily identifiable boundaries, and over which the producer has total control of the waterbed and the ground under the waterbed. Producers who only have control over a column of water will not be eligible for disaster benefits under this subpart.

(d) For ornamental nursery crops, disaster benefits under this subpart are limited to ornamental nursery crops that were grown in a container or controlled environment for commercial sale on property owned or leased by the producer, and cared for and managed using good nursery growing practices. Indigenous crops are not eligible for benefits under this subpart.

(e) For Christmas trees, disaster benefits under this subpart are limited to losses which exceed 35 percent of the value of the Christmas trees present at the time of the disaster. Christmas tree producers seeking disaster assistance under this subpart must provide acreage data, dates of plantings and the quantity of trees planted on each date.

§ 1477.210 Other specialty crops.

(a) Other special provisions to assess losses and calculate disaster assistance under this subpart apply to the following crops and such other crops as may be identified in instructions issued by the Deputy Administrator: turfgrass sod, honey and maple sap.

(b) For turfgrass sod, disaster benefits under this subpart are limited to turfgrass sod which would have matured and been harvested during 1998, when a disaster caused in excess of 35 percent of the expected production to die.

(c) For honey, disaster benefits under this subpart are limited to table and nontable honey produced commercially for human consumption. For calculating benefits, all honey is considered a single crop, regardless of type or variety of floral source or intended use.

(d) For maple sap, disaster benefits under this subpart are limited to maple sap produced on private property in a controlled environment by a commercial operator for sale as sap or syrup. The maple sap must be produced from trees that are: located on land the producer controls by ownership or lease; managed for production of maple sap; and are at least 30 years old and 12 inches in diameter.

Subpart C—Multi-Year Crop Loss Disaster Assistance Program

§ 1477.300 Multi-year crop losses.

(a) The disaster benefits under this subpart, the 1998 Crop Loss Disaster Assistance Program Multi-year Losses, will be equal to 25 percent of the producer's previous loss payments for the qualifying losses if the producer received:

(1) Crop insurance indemnity payments for crop losses on insured crops under the RMA-administered program, excluding replanting or raisin reconditioning payments; or

(2) Payments from the Non-insured Crop Disaster Assistance Program for multi-year crop losses, including any 1994 ad hoc disaster payment of a non-insurable crop.

(b) In order to receive benefits under this subpart, the producer must have received (a)(1) or (a)(2) in at least 3 of the 5 crop years running from 1994 through 1998 and only such losses shall be considered qualifying losses for purposes of paragraph (a) of this section.

(c) For multi-year eligibility based on crop insurance indemnity payments, RMA will determine the producers that meet the eligibility requirements along with indemnity amounts and pass the data to FSA.

(d) For NAP multi-year eligibility, FSA will determine eligible producers. Because the multi-year payments are based on payments previously received, area loss provisions apply.

(e) For purposes of paragraph (a) of this section, the ''Federal loss payments'' shall only be those payments which were received for qualifying losses under the programs identified in paragraphs (a)(1) and (a)(2) of this section. In addition, benefits under this part will be permitted only where the qualifying losses were suffered by the identical producers, as determined

under instructions of the Deputy Administrator. Changes in the organization and control of entities or production units will be considered to be changes in producers for crop history purposes. Likewise, in joint ventures, the entity will be considered to be the producer, not the individual members, and representational entities, such as a trust, will be considered different producers than the beneficiaries of the entity, except as otherwise allowed by the Deputy Administrator. The provisions of this subsection shall be used for qualifying purposes only for multiyear benefits and shall not, for qualified recipients, affect other restrictions that limit the maximum payment amount that may be received under this program.

PART 1478—1999 CROP DISASTER PROGRAM

Sec.

1478.1 Applicability.
1478.2 Administration.
1478.3 Definitions.
1478.4 Producer eligibility.
1478.5 Time for filing application.
1478.6 Limitations on payments and other benefits.
1478.7 Requirement to purchase crop insurance.
1478.8 Miscellaneous provisions.
1478.9 Matters of general applicability.
1478.10 [Reserved]
1478.11 Qualifying 1999 crop losses.
1478.12 Calculating rates and yields.
1478.13 Production losses, producer responsibility.
1478.14 Determination of production.
1478.15 Calculation of acreage for crop losses other than prevented planted.
1478.16 Calculation of prevented planted acreage.
1478.17 Quality adjustments to production.
1478.18 Value loss crops.
1478.19 Other specialty crops.

AUTHORITY: Sec. 801, Pub. L. 106–78, 113 stat. 1135; Pub. L. 106–113, 113 stat. 1501; 15 U.S.C. 714 et seq.

SOURCE: 65 FR 7961, Feb. 16, 2000, unless otherwise noted.

§ 1478.1 Applicability.

This part sets forth the terms and conditions applicable to the 1999 Crop Disaster Program. Under section 801 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2000 (''2000 Act'') (Public Law 106–78, 113 Stat. 1135), and the Omnibus Consolidated Appropriations Act, 2000 (Public Law 106–113, 113, Stat. 1501), the Secretary of Agriculture will make disaster payments available to certain producers who have incurred losses in quantity or quality of their crops due to disasters. Producers will be able to receive benefits under this part for losses to eligible 1999 crops as determined by the Secretary. Producers cannot receive compensation under this part and another part for the same loss except as provided for in § 1478.6, and except as allowed by the Deputy Administrator who shall resolve any such conflicts.

§ 1478.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Farm Service Agency (FSA) committees.

(b) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State FSA committee shall take any action required by this part that has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee that is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reverse any action that is not in accordance with this part.

(d) No delegation in this part to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize the State and county committees to waive or modify deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program or

when, in his or her discretion, it is determined that an exception should be allowed to provide for a more equitable distribution of benefits consistent with the goals of the program provided for in this part.

§ 1478.3 Definitions.

The definitions in this section shall be applicable for all purposes of administering the 1999 Crop Disaster Program provided for in this part.

Actual production means the total quantity of the crop appraised, harvested or that could have been harvested as determined by the county or State FSA committee in accordance with instructions issued by the Deputy Administrator.

Additional coverage means with respect to insurance plans of crop insurance providing a level of coverage equal to or greater than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

Administrative fee means an amount the producer must pay for catastrophic risk protection, limited, and additional coverage crop insurance policies for each crop and crop year.

Appraised production means production determined by FSA, RMA, a company reinsured by FCIC, or other appraiser acceptable to CCC, that was unharvested but which was determined to reflect the crop's yield potential at the time of appraisal.

Approved yield means the amount of production per acre, computed in accordance with FCIC's Actual Production History Program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee. For crops covered under the Noninsured Crop Disaster Assistance program, the approved yield is established according to part 1437 of this title. Only the approved yields based on production evidence submitted to the Agency prior to the 2000 Act will be used for purposes of the 1999 CDP.

Aquaculture means the reproduction and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

Aquaculture facility means any land or structure including, but not limited to, a laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

Aquacultural species means aquacultural species as defined in part 1437 of this chapter.

Catastrophic risk protection means the minimum level of coverage offered by FCIC.

Catastrophic Risk Protection Endorsement means the relevant part of the Federal crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

CCC means the Commodity Credit Corporation.

Control county means: for a producer with farming interests in only one county, the county FSA office in which the producer's farm(s) is administratively located; for a producer with farming interests that are administratively located in more than one county FSA office, the county FSA office designated by FSA to control the payments received by the producer.

County committee means the local FSA county committee.

Crop insurance means an insurance policy reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended.

Crop year means: for insured and uninsured crops, the crop year as defined according to the applicable crop insurance policy; and for noninsurable crops, the year harvest normally begins for the crop, except the crop year for all aquacultural species and nursery crops shall mean the period from October 1 through the following September 30, and the crop year for purposes of calculating honey and tree losses shall be the period running from January 1 through the following December 31.

Cropland means cropland as defined in part 718 of this title.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Disaster means damaging weather, including drought, excessive moisture, hail, earthquake, freeze, tornado, hurricane, typhoon, volcano, excessive wind, excessive heat, or any combination thereof; and shall also include a related condition and all eligible loss conditions, excluding price risk for 1999 crop losses, as determined by the crop insurance policy, if RMA has made an eligible loss determination.

Double-cropped means a condition in which a subsequent crop of a different commodity is planted on the same acreage as the first crop within the same crop year if the county committee determines both crops were or could have been carried to harvest.

Eligible crop means a 1999-crop agricultural commodity commercially produced for food or fiber; floriculture, ornamental nursery, Christmas tree, turf grass sod, seed and industrial crops including tobacco; and aquaculture including ornamental fish. Losses of livestock and livestock related losses are not compensable under this part but may, depending on the circumstances be compensable under part 1439 of this chapter.

End use means the purpose for which the harvested crop is used, such as fresh, processed or juice.

Entity means any legal organization of any kind, including, but not limited to, corporations, trusts and partnerships.

Expected market price (price election) means the price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

Expected production means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

Final planting date means the date established by RMA for insured and uninsured crops by which the crop must be initially planted in order to be insured for the full production guarantee or amount of insurance per acre. For noninsurable crops, the final planting date is the end of the planting period for the crop as determined by CCC.

Flood prevention means with respect to aquacultural species, placing the aquacultural facility in an area not prone to flood; in the case of raceways, providing devices or structures designed for the control of water level; and for nursery crops, placing containerized stock in a raised area above expected flood level and providing draining facilities, such as drainage ditches or tile, gravel, cinder or sand base.

FSA means the Farm Service Agency.

Good nursery growing practices means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

Growing media means:

(1) For aquacultural species, media that provides nutrients necessary for the production of the aquacultural species and protects the aquacultural species from harmful species or chemicals; and

(2) For nursery crops, media designed to prevent ''root rot'' and other media-related problems through a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced.

Harvested means: For insured and uninsured crops, harvested as defined according to the applicable crop insurance policy; for noninsurable single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock; for noninsurable crops with potential multiple harvests in one year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field; and for mechanically harvested noninsurable crops, that the crop has been removed from the field

and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor.

Historic yield means, for a unit, the higher of the county average yield or the producer's approved yield.

Individual stand means, with respect to trees, an area of eligible trees that are tended by an eligible producer as a single operation, whether or not the trees are planted in the same field or similar location, as determined by the county committee. Eligible trees not in the same field or similar location may be considered to be separate individual stands if county committee determines that there are significantly differing levels of loss susceptibility.

Insurance is available means when crop information is contained in RMA's county actuarial documents for a particular crop and a policy can be obtained through the RMA system, except if the Group Risk Plan of crop insurance was the only plan of insurance available for the crop in the county in the 1999 crop year, insurance is considered not available for that crop.

Insured crops means those crops covered by crop insurance pursuant to 7 CFR chapter IV and for which the producer purchased either the catastrophic or buy-up level of crop insurance so available.

Limited coverage means plans of crop insurance offering coverage that is equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC, but less than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

Maximum loss level means the maximum level of crop loss in the county, expressed in either a percent of loss or yield per acre, based on other losses in the county for the same crop as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

Multi-use crop means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and/or grazing.

Multiple planting means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

Noninsurable crops means those crops for which crop insurance was not available.

Normal mortality means the percentage of damaged or dead trees in the individual stand or the percentage of dead aquacultural species that would normally occur during the crop year.

Operator means operator as defined in part 718 of this title.

Pass-through funds means revenue that goes through, but does not remain in, a person's account, such as money collected by an auction house for the sale of livestock that is subsequently paid to the sellers of the livestock, less a commission withheld by the auction house.

Person means person as defined in part 1400 of this chapter, and all rules with respect to the determination of a person found in that part shall be applicable to this part. However, the determinations made in this part in accordance with 7 CFR part 1400, subpart B, Person Determinations, shall also take into account any affiliation with any entity in which an individual or entity has an interest, irrespective of whether or not such entities are considered to be engaged in farming.

Planted acreage means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the area as determined by the county committee.

Producer means producer as defined in part 718 of this title.

Related condition means with respect to disaster, a condition related to a disaster that causes deterioration of a crop such as insect infestation, plant disease, or aflatoxin that is accelerated or exacerbated naturally as a result of damaging weather occurring prior to or during harvest as determined in accordance with instructions issued by the Deputy Administrator.

Reliable production records means evidence provided by the producer that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, that are determined acceptable by the county committee.

Repeat crop means with respect to a producer's production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

RMA means the Risk Management Agency.

Salvage value means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

Secondary use means the harvesting of a crop for a use other than the intended use, except for crops with intended use of grain, but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped.

Secondary use value means the value determined by multiplying the quantity of secondary use times the CCC-established price for this use.

Secretary means the Secretary of the United States Department of Agriculture.

Trees means maple trees for syrup, or orchard trees grown for commercial production of fruits or nuts.

Uninsured crops means those crops for which Federal crop insurance was available, but the producer did not purchase insurance.

Unit means, unless otherwise determined by the Deputy Administrator, basic unit as described in part 457 of this title which, for ornamental nursery production, shall include all eligible plant species and sizes.

Unit of measure means:

(1) For all insured and uninsured crops, the FCIC-established unit of measure;

(2) For aquacultural species, a standard unit of measure such as gallons, pounds, inches or pieces, established by the State committee for all aquacultural species or varieties;

(3) For Christmas trees, a plant or tree;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon; and

(6) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy with minimal use of fractions, as determined by the State committee.

United States means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

USDA means United States Department of Agriculture.

Value loss crop will have the meaning assigned in part 1437 of this chapter.

Verifiable production records means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

§ 1478.4 Producer eligibility.

(a) Producers in the United States will be eligible to receive disaster benefits under this part only if they have suffered 1999 crop losses of eligible crops as a result of a disaster as further specified in this part.

(b) Payments may be made for losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12, for the 1999 crop year and must not otherwise be barred from receiving benefits under part 12 or any other provision of law.

(d) Except as otherwise required by law, the provisions of paragraph (c) of this section shall not apply to producers receiving benefits under this

part for value loss crops unless otherwise determined by the Deputy Administrator.

§ 1478.5 Time for filing application.

Applications for benefits under the 1999 Crop Disaster Program must be filed before the close of business on February 25, 2000, or such other date that may be announced by the Deputy Administrator, in the county FSA office serving the county where the producer's farm is located for administrative purposes.

§ 1478.6 Limitations on payments and other benefits.

(a) A producer may receive disaster benefits under this part on 1999 crop year losses only.

(b) Payments will not be made under this part for grazing losses. Further, the Deputy Administrator may divide and classify crops based on loss susceptibility, yield, and other factors.

(c) No person shall receive more than a total of $80,000 in disaster benefits under this part.

(d) No person shall receive disaster benefits under this part in an amount that exceeds the value of the expected production for the relevant period as determined by CCC.

(e) A person who has a gross revenue in excess of $2.5 million for the 1998 tax year shall not be eligible to receive disaster benefits under this part. Gross revenue includes the total income and total gross receipts of the person, before any reductions. Gross revenue shall not be adjusted, amended, discounted, netted or modified for any reason. No deductions for costs, expenses or pass-through funds will be deducted from any calculation of gross revenue. For purposes of making this determination, gross revenue means the total gross receipts received from farming, ranching and forestry operations if the person receives more than 50 percent of such person's gross income from farming or ranching; or the total gross receipts received from all sources if the person receives 50 percent or less of such person's gross receipts from farming, ranching and forestry.

(f) In the event the total amount of applications for disaster benefits under this part exceeds the available funds, payments shall be reduced by a uniform national percentage. Such reductions shall be applied before any determination of limits on compensation due to multiple USDA benefits and after the imposition of applicable payment limitation and gross revenues caps. Available funds will not include funds made available under other parts for honey loans, mohair loans, and payments to livestock producers.

§ 1478.7 Requirement to purchase crop insurance.

(a) Any producer who elected not to purchase crop insurance on a crop in 1999 for which the producer receives crop loss assistance under this part must purchase crop insurance on that crop for the 2000 and 2001 crop years.

(b) If, at the time the producer is advised that he or she is eligible for crop loss assistance under this part, and the sales closing date for the 2000 crop year has passed for any crop for which crop insurance is required as specified in paragraph (a) of this section, the producer must purchase crop insurance for the 2001 crop year for any such crop.

(c) If any producer fails to purchase crop insurance as required in paragraph (a) or (b) of this section, the producer will be required to refund the benefits received or pay a lesser amount as may be specified by the Deputy Administrator.

§ 1478.8 Miscellaneous provisions.

(a) Disaster benefits under this part are not subject to administrative offset under § 1403.8 of this chapter except as determined appropriate by the Deputy Administrator who may, among other offsets, deduct from the benefits accrued any reductions appropriate for a producer's failure to obtain crop insurance as required in connection with benefits for crop losses in prior years.

(b) A person shall be ineligible to receive disaster assistance under this part if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(c) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (d) of this section and late-payment charges as provided for in part 1403 of this chapter.

(d) Producers shall be required to pay interest on any refund required of the producer receiving assistance or a payment if CCC determines that payments or other assistance were provided to the producer and the producer was not eligible for such assistance. The interest rate shall be one percent greater than the rate of interest that the United States Treasury charges CCC for funds, as of the date of payment. Interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date repayment is completed. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any error by the producer.

(e) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(f) In the event that any request for assistance or payment under this part was established as result of erroneous information or a miscalculation, the assistance or payment shall be recalculated and any excess refunded with applicable interest.

(g) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(h) Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the regulations set forth at parts 11 and 780 of this title.

(i) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

(j) Payments that are earned under this part may be assigned in accordance with the provisions of part 1404 of this chapter upon filling out the applicable assignment form.

(k) For the purposes of 28 U.S.C. 3201(e), the restriction on receipt of funds or benefits under this program is waived; however, this waiver shall not preclude withholding or offsetting where it is deemed appropriate by the Deputy Administrator.

§ 1478.9 Matters of general applicability.

(a) For calculations of loss made with respect to insured crops, the producer's existing unit structure will be used as the basis for the calculation and may include optional units established in accordance with part 457 of this title. For uninsured and noninsurable crops, basic units will be established for these purposes.

(b) Loss payment rates and factors shall be established by the state committee based on procedures provided by the Deputy Administrator.

(c) County average yield for loss calculations will be the simple average of the 1993 through 1997 official county yields established by FSA.

(d) County committees will assign production when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices that cause lower yields than those upon which the historic yield is based;

(3) The producer has a contract providing a guaranteed payment for all or a portion of the crop; or

(4) The crop is planted beyond the normal planting period for the crop.

(e) The county committee shall establish a maximum loss level based on other losses in the county for the same crop. The maximum loss level for the county shall be expressed as either a percent of loss or yield per acre. The maximum loss level will apply when:

(1) Unharvested acreage has not been appraised by FSA, RMA, a company reinsured by FCIC, or other appraiser;

(2) The crop's loss is because of an ineligible disaster condition or circumstances other than a natural disaster;

(3) Acceptable production records for harvested acres are not available from any source; or

(4) Any other good reason for such a limit shall present itself.

(f) Assigned production for practices that result in lower yields than those for which the historic yield is based shall be established based on the acres found to have been subjected to those practices.

(g) Assigned production for crops planted beyond the normal planting period for the crop shall be calculated according to the lateness of planting the crop. If the crop is planted after the final planting date by:

(1) 1 through 10 calendar days, the assigned production reduction will be based on one percent of the payment yield for each day involved.

(2) 11 through 24 calendar days, the assigned production reduction will be based on 10 percent of the payment yield plus an additional two percent reduction of the payment yield for each days of days 11 through 24 that are involved.

(3) 25 or more calendar days or a date from which the crop would not reasonably be expected to mature by harvest, the assigned production reduction will be based on 50 percent of the payment yield or such greater amount determined by the county committee to be appropriate.

(h) Assigned production for producers with contracts to receive a guaranteed payment for production of an eligible crop will be established by the county committee by:

(1) Determining the total amount of guaranteed payment for the unit;

(2) Converting the guaranteed payment to guaranteed production by dividing the total amount of guaranteed payment by the approved county price for the crop or variety or such other factor deemed appropriate if otherwise the production would appear to be too high; and

(3) Establishing the production for the unit as the greater of the actual net production for the unit or the guaranteed payment.

§ 1478.10 [Reserved]

§ 1478.11 Qualifying 1999 crop losses.

(a) To receive disaster benefits under this part, which covers single-year 1999 crop losses, the county committee must determine that because of a disaster, the producer with respect to the 1999 crop year:

(1) Was prevented from planting a crop;

(2) Sustained a loss in excess of 35 percent of the expected production of a crop;

(3) Sustained a loss in excess of 35 percent of the value for value loss crops; or

(4) Sustained damage in excess of 20 percent of an individual stand of eligible trees.

(b) Calculation of benefits under this part shall not include losses:

(1) That are the result of poor management decisions or poor farming practices as determined by the county committee on a case-by-case basis;

(2) That are the result of the failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant after a loss;

(3) That are not as a result of a natural disaster;

(4) To crops not intended for harvest in crop year 1999;

(5) To losses of by-products resulting from processing or harvesting a crop, such as cotton seed, peanut shells, wheat or oat straw;

(6) To home gardens;

(7) That are a result of water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected for the containment or release of the water; or

(8) To losses of trees that are a result of normal mortality or would have

been lost to normal mortality but for the disaster.

(c) Calculation of benefits under this part for ornamental nursery stock shall not include losses:

(1) Caused by a failure of power supply or brownouts;

(2) Caused by the inability to market nursery stock as a result of quarantine, boycott, or refusal of a buyer to accept production;

(3) Caused by fire;

(4) Affecting crops where weeds and other forms of undergrowth in the vicinity of the nursery stock have not been controlled; or

(5) Caused by the collapse or failure of buildings or structures.

(d) Calculation of benefits under this part for honey where the honey production by colonies or bees was diminished, shall not include losses:

(1) Where the inability to extract was due to the unavailability of equipment; the collapse or failure of equipment or apparatus used in the honey operation;

(2) Resulting from improper storage of honey;

(3) To honey production because of bee feeding;

(4) Caused by the application of chemicals;

(5) Caused by theft, fire, or vandalism;

(6) Caused by the movement of bees by the producer or any other person; or

(7) Due to disease or pest infestation of the colonies.

§ 1478.12 Calculating rates and yields.

(a) Payment rates for 1999 year crop losses shall be:

(1) 65 percent of the maximum established RMA price for insured crops;

(2) 65 percent of the State average price for noninsurable crops;

(3) 60 percent of the maximum established RMA price for uninsured crops; and

(4) 65 percent of the established practice rate for damage to eligible trees.

(b) Disaster benefits under this part for losses to crops other than trees shall be made in an amount determined by multiplying the loss of production in excess of 35 percent of the expected production by the applicable payment rate established according to paragraph (a) of this section.

(c) Disaster benefits under this part for losses of trees shall be made in an amount determined by multiplying the quantity of acres or number of trees in a practice approved by the county committee as authorized by the Deputy Administrator, by the payment rate established according to paragraph (a) of this section.

(d) Separate payment rates and yields for the same crop may be established by the county committee as authorized by the Deputy Administrator, when there is supporting data from NASS or other sources approved by CCC that show there is a significant difference in yield or value based on a distinct and separate end use of the crop. In spite of differences in yield or values, separate rates or yields shall not be established for crops with different cultural practices, such as organically or hydroponically grown.

(e) Each eligible producer's share of a disaster payment shall be based on the producer's share of the crop or crop proceeds, or, if no crop was produced, the share the producer would have received if the crop had been produced. In cases where crop insurance provides for a landlord/tenant to insure the tenant/landlord's share according to part 457 of this title, disaster payments will be issued on the same basis.

(f) When calculating a payment for a unit loss:

(1) The unharvested payment factor shall be applied to crop acreage planted but not harvested; and

(2) The prevented planting factor shall be applied to any prevented planted acreage eligible for payment.

(g) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

§ 1478.13 Production losses, producer responsibility.

(a) Where available, RMA loss records will be used for insured crops.

(b) If RMA loss records are not available, producers are responsible for:

(1) Retaining or providing, when required, the best verifiable or reliable production records available for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production; and

(4) Providing the information in a manner that can be easily understood by the county committee.

(c) In determining production under this section the producer must supply acceptable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, acceptable production records include: commercial receipts; settlement sheets; warehouse ledger sheets; or load summaries; appraisal information from a loss adjuster acceptable to CCC. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of in means other than commercial channels, acceptable production records include: truck scale tickets; appraisal information from a loss adjuster acceptable to CCC; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

(d) Producers must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment. The failure to report the existence of any guaranteed contract or similar arrangement or agreement shall be considered as providing false information to CCC.

§ 1478.14 Determination of production.

(a) Production under this part shall include all harvested production, unharvested appraised production and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year shall include the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested, the actual harvested production shall be used to determine benefits.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent as established by CCC.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated for each use; with

(1) The intended use or uses for disaster purposes based on historical production and acreage evidence provided by the producer; and

(2) The eligible acres for each use and the calculation of the disaster payment will be determined by the county committee according to instruction issued by the Deputy Administrator.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and market price, 60 percent of the salvage value received will be deducted from the disaster payment.

(g) If a producer has an arrangement, agreement, or contract for guaranteed payment for production (as opposed to production based on delivery), the production to count shall be the greater of the actual production or the guaranteed payment converted to production as determined by CCC.

(h) Production that is commingled between units before it was a matter of record and cannot be separated by using records or other means acceptable to CCC shall be prorated to each respective by CCC. Commingled production may be attributed to the applicable unit, if the producer made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee shall assign production for the unit when the county committee determines that:

(1) The producer has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this part, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The producer carries out a practice, such as double cropping, that generally results in lower yields than the established historic yields;

(4) The producer has a contract to receive a guaranteed payment for all or a portion of the crop; or

(5) A crop is late-planted.

(j) For sugarcane, the quantity of sugar produced from such crop shall exclude acreage harvested for seed.

(k) For peanuts, the actual production shall be all peanuts harvested for nuts regardless of their disposition or use as adjusted for low quality.

(l) For tobacco, except flue-cured and burley, the actual production shall be the sum of the tobacco: marketed or available to be marketed; destroyed after harvest; and produced but unharvested, as determined by an appraisal. For flue-cured and burley tobacco, the actual production shall be the sum of the tobacco: marketed, regardless of whether the tobacco was produced in the current crop year or a prior crop year; on hand; destroyed after harvest; and produced but unharvested, as determined by an appraisal.

§ 1478.15 Calculation of acreage for crop losses other than prevented planted.

(a) Subject to paragraph (b) of this section, the acreage of a crop planted in each planting period shall be considered a different crop for the purpose of determining disaster benefits under this part.

(b) In cases where there is a repeat crop, double crop or a multiple planting, each of these crops may be considered different crops if the county committee determines that:

(1) Both the initial and subsequent planted crops were planted with an intent to harvest;

(2) The subsequent crop was planted after the time when the initial crop would normally have been harvested;

(3) Both the initial and subsequent planted crops were planted within the normal planting period for that crop; and

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices.

(c) In cases where an initial crop is planted and fails due to an eligible disaster condition and it is generally considered too late to replant and a subsequent crop is planted on the same acreage within its normal planting period in the same crop year and also failed because of an eligible disaster condition, both crops are eligible for disaster assistance if they meet all other eligibility provisions of this part.

§ 1478.16 Calculation of prevented planted acreage.

(a) When determining losses under this part, prevented-planted acreage will be considered separately from planted acreage of the same crop.

(b) Except as provided in paragraph (c) of this section, for insured crops, disaster payments under this part for prevented-planted acreage shall not be made unless RMA documentation indicates that the eligible producer received a prevented planting payment under the RMA-administered program.

(c) For insured crops, disaster payments under this part for prevented-planted acreage will be made available for the following crops for which prevented planting coverage was not available and for which the county committee will make an eligibility determination according to paragraph (d) of this section: peppers; sweet corn (fresh market); tomatoes (fresh market); tomatoes (processing).

(d) For uninsured or noninsurable crops, or the insured crops listed in paragraph (c) of this section, the producer must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the producer was prevented from planting the crop by an eligible disaster that both:

(1) Prevented most producers from planting on acreage with similar characteristics in the surrounding area; and

(2) Unless otherwise approved by the Deputy Administrator, began no earlier than the planting season for the 1999 crop.

(e) Prevented planted disaster benefits under this part shall not apply to:

(1) Aquaculture, including ornamental fish; perennial forage crops grown for hay, seed, or grazing; ginseng root and ginseng seed; honey; maple sap; millet; nursery crops; sweet potatoes; tobacco; trees; turfgrass sod; and tree and vine crops;

(2) Any acreage that is double-cropped, even if the producer has a history of double-cropping acreage;

(3) Uninsured crop acreage that is unclassified for insurance purposes;

(4) Acreage that is used for conservation purposes or intended to be left unplanted under any USDA program;

(5) The same acreage from which any benefit is derived under any program administered by the USDA on which a crop is planted and fails during the crop year except as provided in § 1478.6(f);

(6) Any acreage on which a crop other than a cover crop was harvested, hayed, or grazed during the crop year;

(7) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year unless the county committee determines the lease was for haying and grazing rights only and was not a lease for use of the land;

(8) Acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(9) Acreage for which the producer or any other person received a prevented planted payment for any crop for the same acreage, excluding share arrangements; and

(10) Acreage for which the producer cannot provide proof to the county committee that inputs such as seed, chemicals, and fertilizer were available to plant and produce a crop with the expectation of at least producing a normal yield.

(f) Disaster benefits under this part shall not apply to uninsured and noninsurable crops where the prevented-planted acreage was affected by a disaster that was caused by drought or the failure of the irrigation water supply unless the acreage is in an area classified by the Palmer Drought Severity Index as in a severe or extreme drought during the planting period time specified by the producer and prior to the final planting date for the crop.

(g) For uninsured or noninsurable crops and the insured crops listed in paragraph (c) of this section, for prevented planting purposes:

(1) The maximum prevented-planted acreage for all crops:

(i) Cannot exceed the number of acres of cropland in the unit for the crop year; and

(ii) Will be reduced by the number of acres planted in the unit;

(2) The maximum prevented planted acreage for a crop cannot exceed the number of acres planted by the producer, or that was prevented from being planted, to the crop in any 1 of the 1995 through 1998 crop years as determined by the county committee;

(3) For crops grown under a contract specifying the number of acres contracted, the prevented-planted acreage is limited to the result of the number of acres specified in the contract minus planted acreage;

(4) For each crop type or variety for which separate prices or yields are sought for prevented-planted acreage, the producer must provide evidence that the claimed prevented-planted acres were successfully planted in at least 1 of the most recent 4 crop years; and

(5) The prevented planted acreage must be one contiguous block consisting of at least 20 acres or 20 percent of the intended planted acreage in the unit, whichever is less.

§ 1478.17 Quality adjustments to production.

(a) For the crops identified in paragraph (b) of this section, subject to the provisions of this section and part, the quantity of production of crops of the producer shall be adjusted to reflect diminished quality resulting from the disaster.

(b) Crops eligible for quality adjustments to production are limited to:

(1) Barley; canola; corn; cotton; crambe , flaxseed; grain sorghum; mustard seed; oats; peanuts; rapeseed; rice; safflower; soybeans; sugar beets; sunflower-oil; sunflower-seed; tobacco; wheat; and

(2) Crops with multiple market uses such as fresh, processed or juice, as supported by NASS data or other data determined acceptable.

(c) The producer must submit documentation for determining the grade and other discount factors that were applied to the crop.

(d) Quality adjustments will be applied after production has been adjusted to standard moisture, when applicable.

(e) Except for cotton, if a quality adjustment has been made for multi-peril crop insurance purposes, an additional adjustment will not be made.

(f) Quality adjustments for crops, other than cotton, peanuts, sugar beets and tobacco, listed in paragraph (b)(1) of this section may be made by applying an adjustment factor based on dividing the Federal marketing assistance loan rate applicable to the crop and producer determined according to part 1421 of this chapter by the unadjusted county marketing assistance loan rate for the crop. For crops that grade ''sample'' and are marketed through normal channels, production will be adjusted as determined by CCC. County committees may, with state committee concurrence, establish county average quality adjustment factors.

(g) Quality adjustments for cotton shall be based on the difference between:

(1) The loan rate applicable to the crop and producer determined according to part 1427 of this chapter; and

(2) The adjusted county loan rate. The adjusted county rate is the county loan rate adjusted for the 5-year county average historical quality premium or discount, as determined by CCC.

(h) Quality adjustments for quota peanuts shall for unused quota be based on the difference between the adjusted sales price and the quota price. The adjusted sales price is the quota price minus discounts for quality, regardless of the actual sales price received. Adjustments for non-quota peanuts may also be made to reflect diminished quality as determined by CCC.

(i) Quality adjustments for sugar beets shall be based on sugar content. The 1999 actual production for the producer shall be adjusted upward or downward to account for sugar content as determined by CCC.

(j) Quality adjustments for tobacco shall be based on the difference between the sales price and the support price except that the market price may be used instead of the support price where market prices for the tobacco are normally in excess of the support price.

(k) Quality adjustments for crops with multiple market uses such as fresh, processed and juice, shall be applied based on the difference between the producer's historical marketing percentage of each market use compared to the actual percentage for 1999.

(l) Quality adjustments for aflatoxin shall be based on the aflatoxin level. The producer must provide the county committee with proof a price reduction because of aflatoxin. The aflatoxin level must be 20 parts per billion or more before a quality adjustment will be made. The quality adjustment factor applied to affected production is .50 if the production is marketable. If the production is unmarketable due to aflatoxin levels of at least 20 parts per billion, production will be adjusted to zero. Any value received will be considered salvage.

(m) Any quantity of the crop determined to be salvage will not be considered production. Salvage values shall be factored by 0.60.

(n) Quality adjustments do not apply to value loss crops.

(o) Quality adjustments shall not apply to: hay, honey, maple sap, turfgrass sod, crops marketed for a use other than an intended use for which there is not an established county price or yield.

§ 1478.18 Value loss crops.

(a) Special provisions to assess losses and calculate disaster assistance under this part apply to the following crops and such other crops as determined by CCC: ornamental nursery; Christmas

trees; vegetable and root stock including ginseng root; and aquaculture, including ornamental fish.

(b) Disaster benefits under this part are calculated based on the loss of value at the time of disaster, as determined by CCC.

(c) For aquaculture, disaster benefits under this part for aquacultural species are limited to those aquacultural species that were placed in the aquacultural facility by the producer. Disaster benefits under this part shall not be made available for aquacultural species that are growing naturally in the aquaculture facility. Disaster benefits under this part are limited to aquacultural species that were planted or seeded on property owned or leased by the producer where that land has readily identifiable boundaries, and over which the producer has total control of the waterbed and the ground under the waterbed. Producers who only have control over a column of water will not be eligible for disaster benefits under this part.

(d) For ornamental nursery crops, disaster benefits under this part are limited to ornamental nursery crops that were grown in a container or controlled environment for commercial sale on property owned or leased by the producer, and cared for and managed using good nursery growing practices. Indigenous crops are not eligible for benefits under this part.

(e) For Christmas trees, disaster benefits under this part are limited to losses that exceed 35 percent of the value of the Christmas trees present at the time of the disaster. Christmas tree producers seeking disaster assistance under this part must provide acreage data, dates of plantings and the quantity of trees planted on each date.

(f) For vegetable and root stock, disaster benefits under this part are limited to plants grown in a container or controlled environment for use as transplants or root stock by the producer for commercial sale or property owned or leased by the producer and managed using good rootstock or fruit and vegetable plant growing practices.

§ 1478.19 Other specialty crops.

(a) For turfgrass sod, disaster benefits under this subpart are limited to turfgrass sod that would have matured and been harvested during 1999, when a disaster caused in excess of 35 percent of the expected production to die.

(b) For honey, disaster benefits under this part are limited to table and non-table honey produced commercially for human consumption. For calculating benefits, all honey is considered a single crop, regardless of type or variety of floral source or intended use.

(c) For maple sap, disaster benefits under this part are limited to maple sap produced on private property in a controlled environment by a commercial operator for sale as sap or syrup. The maple sap must be produced from trees that are: located on land the producer controls by ownership or lease; managed for production of maple sap; and are at least 30 years old and 12 inches in diameter.

PART 1479—HARNEY COUNTY FLOOD ASSISTANCE

Sec.
1479.1 Applicability.
1479.2 Administration.
1479.3 Definitions.
1479.4 Application process.
1479.5 County committee determinations of general applicability.
1479.6 Loss criteria.
1479.7 Producer eligibility.
1479.8 Calculation of assistance.
1479.9 Availability of funds; payments.

AUTHORITY: Sec. 207, Pub. L. 106–113, 113 Stat. 1501.

SOURCE: 65 FR 36583, June 8, 2000, unless otherwise noted.

§ 1479.1 Applicability.

This subpart sets forth the terms and conditions applicable to flood assistance for Harney County, Oregon. Benefits will be provided to eligible producers in Harney County, Oregon, on land where flooding occurred during the 1999 crop year, and has been subject to flooding, one of the years 1994 through 1998.

§ 1479.2 Administration.

(a) This program shall be, to the extent practicable and to the extent not inconsistent with the provisions of this part, be administered in the same manner as the program provided for in 7

CFR part 1478 utilizing the regulations effective in that part as of March 1, 2000.

(b) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Farm Service Agency (FSA) committees.

(c) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(d) The State FSA committee shall take any action required by this part that has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee that is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reverse any action that is not in accordance with this part.

(e) No delegation herein to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(f) The Deputy Administrator may authorize the State and county committees to waive or modify deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program or when, in his or her discretion, it is determined that an exception should be allowed to provide for a more equitable distribution of benefits consistent with the goals of the program provided for in this part.

§ 1479.3 Definitions.

Terms in this part shall have the same meanings as those defined in § 1478.1 of this chapter. In addition, for purposes of this part and notwithstanding any contrary definitions in part 718 of this title or part 1478 of this chapter:

Application means the Form CCC–454, which was previously used for the Flood Compensation Program formerly provided for in this chapter, which form shall now be used for the program provided for in this part. The CCC–454 shall be used to collect the information necessary to determine the total acres flooded for purposes of this program.

Calendar year 1999 means January 1, 1999 through December 31, 1999.

Cropland means cropland as defined in part 718 of this chapter.

Forage means growing vegetation used for food for domestic animals.

NASS means the National Agricultural Statistics Service.

§ 1479.4 Application process.

(a) Producers must submit a completed application by the date established by the Deputy Administrator. The application and any supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible flooded land or to the county FSA office that maintains the farm records for the producer.

(b) Producers shall certify as to the accuracy of all the information being requested in the application, and provide any other information to CCC that the county FSA office or committee deems necessary to determine the producer's eligibility.

§ 1479.5 County committee determinations of general applicability.

(a) County committees shall determine whether land that is the subject of the application is land that has suffered flood-related production losses during calendar year 1999, and is at the same time land to which the following apply:

(1) It is land that otherwise would have been used for crops or for pasture and could not be used because it was inaccessible, incapable of production, or the production was unusable during CY 1999, due to flooding;

(2) The land was inaccessible, incapable of production, or the production was unusable any one of the years 1994 through 1998, due to flooding; and

(3) The land has, otherwise, a history of actual crop production or use as pastureland at some time since 1990.

(b) In making the determination called for in paragraph (a) of this section, the County committee shall use

what it considers to be the best information available including but not limited to: Extension Service; Natural Resources Conservation Service; aerial photography; rainfall data; and general knowledge of losses due to flooding.

(c) If the county Committee makes an affirmative determination under paragraph (a) of this section, the producer with the affected acreage shall be considered an ''eligible producer'' for purposes of this part.

(d) For purposes of setting rental rates for calculations required to be made elsewhere in this part the county committee shall use the established rental rates for Harney County, for cropland and pasture-land. These rates shall be reviewed by the State Committee and may be equal to the estimated 5-year average rental rates for all such land of each type in the county. The State Committee may take into account rates established for the Conservation Reserve Program operated under 7 CFR part 1410 and ensure, subject to paragraph (e) of this section, that the rates are comparable. The Deputy Administrator shall review and may adjust the rates for reasonableness and consistency.

(e) Except as provided by the Deputy Administrator, rental rates shall be established based on NASS data, if available for 1999.

§ 1479.6 Loss criteria.

(a)(1) The flooded land for which a producer requests benefits must be within the physical boundary of Harney County, Oregon.

(b) To be eligible for benefits under this subpart, a producer in Harney County and contiguous counties must have a tract of land that meets all the following criteria:

(1) The land is cropland or pasture land intended to be used for the production of feed for livestock (haying, grazing, or feed grain production) or other agricultural use in CY 1999 and one of the years 1994 through 1998;

(2) The land, for calendar year 1999, was inaccessible or unable to be used for crop production, grazing, or haying, or the production was unusable because of flooding;

(3) The land has been owned, leased or under a binding cash lease by the producer for crop year 1999;

(4) The land is a contiguous parcel of land with an area equal to one acre or more;

(5) The land actually produced a crop, or was used for pasture, during or after the 1990 crop year.

(c) On the CCC–454 producers shall be required to certify on each farm the number of flooded cropland and noncropland acres for the farm in 1999.

(d) All determinations as to the amount of land eligible for enrollment and compensation under this subpart are subject to approval by the county committee.

(e) The county committee may use any available documentation to make the determinations under paragraphs (b) and (c) of this section, including but not limited to: maps, acreage reports, slides, precipitation data, water table levels and disaster reports.

§ 1479.7 Producer eligibility.

(a) Producers in Harney County will be eligible to receive benefits under this part only if they have suffered 1999-crop losses of eligible crops as a result of flooding.

(b) Payments made for losses suffered by eligible producers under this subpart shall be subject to the provisions of §§ 1478.4 through 1478.12 of this chapter, and their successor regulations, except as otherwise provided in this subpart.

(c) No person as defined and determined under part 1400 of this chapter may receive more than $40,000 under this subpart.

(d) No person as defined and determined under part 1400 of this chapter will be eligible for payment under this subpart if that person's annual gross receipts for the 1998 tax year were in excess of $2.5 million. That determination shall be made in the manner provided for in § 1478.6 of this chapter.

(e) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of § 1400.501 and § 1400.502 of this chapter.

[65 FR 36583, June 8, 2000; 65 FR 47841, Aug. 4, 2000]

§ 1479.8 Calculation of assistance.

(a) The unadjusted value of this emergency assistance determined with respect to the flooded land in Harney County for each producer shall not exceed the amount obtained by adding paragraphs (b) and (c) of this section.

(b) For each eligible producer with respect to the applicable qualifying cropland, the number of qualifying acres will be multiplied by the established local payment rate for cropland, as determined by the county Committee in accordance with instructions of the Deputy Administrator.

(c) For each eligible producer with respect to the applicable qualifying pastureland or other land that does not meet the FSA definition of ''cropland,'' the number of qualifying acres will be multiplied by the established payment rate for ''non-cropland'' acres.

§ 1479.9 Availability of funds; payments.

In the event that the total amount of claims submitted under this subpart exceeds the $1.09 million appropriated for the program provided for in this part, payments otherwise calculated under § 1478.8 shall be reduced by a uniform percentage to allow for a proration of claims within the appropriated amount. Such payment reductions shall be after the imposition of applicable payment limitation provisions. Applications for payment must be submitted by the time and in the manner specified by the Deputy Administrator.

SUBCHAPTER C—EXPORT PROGRAMS

PART 1484—PROGRAMS TO HELP DEVELOP FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Subpart A—General Information

Sec.
1484.10 What is the effective date of this part?
1484.11 Has the Office of Management and Budget reviewed the paperwork and record keeping requirements contained in this part?
1484.12 What is the Cooperator program?
1484.13 What special definitions apply to the Cooperator program?
1484.14 Is my organization eligible to participate in the Cooperator program?

Subpart B—Application and Fund Allocation

1484.20 How can my organization apply to the Cooperator program?
1484.21 How does FAS determine which Cooperator program applications are approved?
1484.22 How are Cooperator program funds allocated?

Subpart C—Program Operations

1484.30 How does FAS formalize its working relationship with approved Cooperators?
1484.31 Who acts on behalf of each Cooperator?
1484.32 Must Cooperators follow specific employment practices?
1484.33 Must Cooperators follow certain financial management guidelines?
1484.34 Must Cooperators adhere to specific standards of ethical conduct?
1484.35 Must Cooperators follow specific contracting procedures?
1484.36 How do Cooperators dispose of disposable property?
1484.37 Must Cooperators adhere to Federal Travel Regulations?
1484.38 Can a Cooperator keep proceeds generated from an activity?

Subpart D—Contributions and Reimbursements

1484.50 What cost share contributions are eligible?
1484.51 What are ineligible contributions?
1484.52 What are the guidelines for computing the value of non-cash contributions?
1484.53 What are the requirements for documenting and reporting contributions?
1484.54 What expenditures may FAS reimburse under the Cooperator program?
1484.55 What expenditures may not be reimbursed under the Cooperator program?
1484.56 How are Cooperators reimbursed?
1484.57 Will FAS make advance payments to a Cooperator?

Subpart E—Reporting, Evaluation, and Compliance

1484.70 Must Cooperators report to FAS?
1484.71 Are Cooperator documents subject to the provisions of the Freedom of Information Act?
1484.72 How is program effectiveness measured?
1484.73 Are Cooperators penalized for failing to make required contributions?
1484.74 How is Cooperator program compliance monitored?
1484.75 How does a Cooperator respond to a compliance report?
1484.76 Can a Cooperator appeal the determinations of the Deputy Administrator?

AUTHORITY: 15 U.S.C. 714c(f).

SOURCE: 64 FR 52630, Sept. 30, 1999, unless otherwise noted. Redesignated at 65 FR 9995, Feb. 25, 2000.

Subpart A—General Information

§ 1484.10 What is the effective date of this part?

This part applies to activities that are conducted in accordance with the Cooperators' FY 2000 and subsequent marketing plan years. The Cooperator Program is administered by personnel of the Foreign Agricultural Service.

[64 FR 52630, Sept. 30, 1999. Redesignated and amended at 65 FR 9995, Feb. 25, 2000]

§ 1484.11 Has the Office of Management and Budget reviewed the paperwork and record keeping requirements contained in this part?

The paperwork and record keeping requirements imposed by this part have been submitted to the Office of Management and Budget (OMB) for emergency review and reinstatement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously assigned control number 0551–0026 for this information collection.

§ 1484.12 What is the Cooperator program?

(a) Under the Foreign Market Development Cooperator (Cooperator) Program, FAS enters into project agreements with eligible nonprofit U.S. trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to create, expand, or maintain foreign markets for U.S. agricultural commodities and products. FAS does not provide brand promotion assistance to Cooperators under this program.

(b) FAS enters into project agreements with those eligible nonprofit U.S. trade organizations that have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. Project agreements involve the promotion of agricultural commodities on a generic basis. Project agreements do not involve activities targeted directly toward consumers purchasing as individuals. Activities must contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints and export growth opportunities by focusing on matters such as reducing infra-structural or historical market impediments; improving processing capabilities; modifying codes and standards; and identifying new markets or new applications or uses for the agricultural commodity or product in the foreign market.

(c) The Cooperator program generally operates on a reimbursement basis.

(d) FAS policy is to ensure that benefits generated by Cooperator agreements are broadly available throughout the relevant agricultural sector and no one entity gains an undue advantage or sole benefit from program activities.

§ 1484.13 What special definitions apply to the Cooperator program?

For purposes of this part the following definitions apply:

Activity—a specific market development effort undertaken by a Cooperator to address a constraint or opportunity.

Administrator—the Vice President, CCC, who also serves as Administrator, FAS, USDA, or designee.

Agricultural commodity—an agricultural commodity, food, feed, fiber, wood, livestock or insect, and any product thereof; and fish harvested from a U.S. aquaculture farm, or harvested by a vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

Attache/Counselor—the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Commodity Division—the office within the Foreign Agricultural Service responsible for the commodity covered by the project agreement.

Compliance Review Staff—the office within the Foreign Agricultural Service responsible for performing periodic reviews of Cooperators to ensure compliance with this part.

Constraint—a condition in a particular country or region which needs to be addressed in order to develop, expand, or maintain exports of a specific U.S. agricultural commodity.

Consumer promotion—activities that are designed to directly influence consumers by changing attitudes or purchasing behaviors towards U.S. agricultural products.

Contribution—the cost-share expenditure made by a Cooperator or the U.S. industry in support of an activity; e.g., money, personnel, materials, services, facilities, or supplies.

Cooperator or *U.S. Cooperator*—a nonprofit U.S. agricultural trade organization which has entered into a foreign market development agreement with FAS.

Cooperator Program—the Foreign Market Development Cooperator Program.

Deputy Administrator—the Deputy Administrator, Commodity and Marketing Programs, FAS, USDA, or designee.

Division Director—the director of a commodity division, Commodity and Marketing Programs, FAS, USDA.

Eligible commodity—an agricultural commodity that is comprised of at least 50 percent U.S. origin content by weight, exclusive of added water.

Eligible trade organization—a United States trade organization that promotes the exports of one or more United States agricultural commodities or products and does not have a business interest in or receive remuneration from specific sales of agricultural commodities or products.

Expenditure—transfer of funds.

FAS—Foreign Agricultural Service, USDA.

Foreign third party—a foreign entity that assists, in accordance with this part, in promoting the export of a U.S. agricultural commodity.

Generic promotion—a promotion that does not involve the exclusive or predominant use of a single company name or logo(s) or brand name(s) of a single company.

Market—a country or region in which an activity is conducted.

Marketing plan year—the program year beginning on October 1 and ending on September 30, during which Cooperators can undertake activities, consistent with this part and their agreements with FAS, and seek reimbursement. For example, marketing plan year 2000 begins on October 1, 1999, and ends on September 30, 2000.

Project agreement—a contract between FAS and a Cooperator in which the basic working relationship is described including the program and financial obligations of each.

Project funds—the funds made available to a Cooperator under a project agreement, and authorized for expenditure in accordance with this part.

Property—furniture or equipment having a useful life of over one year and an acquisition cost of $500 or more.

STRE—sales and trade relations expenditures.

Trade team—a group of individuals engaged in an activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

USDA—the United States Department of Agriculture.

[64 FR 52630, Sept. 30, 1999. Redesignated and amended at 65 FR 9995, Feb. 25, 2000]

§ 1484.14 Is my organization eligible to participate in the Cooperator program?

(a) To participate in the Cooperator program, an entity must be a nonprofit U.S. agricultural trade organization and contribute at least 50 percent of the value of resources provided by FAS for activities conducted under the project agreement.

(b) FAS may require that a project agreement include a contribution level greater than that specified in paragraph (a) of this section. In requiring a higher contribution level, FAS will take into account such factors as past Cooperator contributions, previous Cooperator program funding levels, the length of time an entity participates in the program, and the entity's ability to increase its contribution.

(c) FAS will enter into Cooperator agreements only for the promotion of eligible commodities.

Subpart B—Application and Fund Allocation

§ 1484.20 How can my organization apply to the Cooperator program?

FAS will publish a Notice in the FEDERAL REGISTER that it is accepting applications for participation in the Cooperator program for a specified marketing plan year. Applications shall be submitted in accordance with the terms and requirements specified in the Notice. An application shall contain basic information about the applicant and the proposed program, a strategic plan, and performance measures. FAS may request any additional information which it deems necessary to evaluate a Cooperator program application.

(a) *Basic applicant and program information*. All Cooperator program applications shall contain:

(1) The name and address of the applicant;

(2) The name of the Chief Executive Officer (or designee);

(3) The name and telephone number of the applicant's primary contact person;

(4) A description of management and administrative capability;

(5) The name(s) of the person(s) responsible for managing the program;

(6) A description of prior export promotion experience;

(7) A description of the organization, its membership, and membership criteria;

(8) A list of affiliated organizations;

(9) The applicant's Federal Tax Identification Number;

(10) The dollar amount of FAS resources requested under the Cooperator program;

(11) The value of the applicant's contribution, stated in dollars or as a percentage of paragraph (a)(10) of this section;

(12) The value of contributions from other sources, stated in dollars or as a percentage of paragraph (a)(10) of this section;

(13) A description of the eligible commodity(s); the associated commodity aggregate code(s), obtained from FAS; and the percentage of U.S. origin content by weight, exclusive of added water; and

(14) A certification statement, and, if requested by the Deputy Administrator, a written explanation supporting the certification, that any funds received will supplement, but not supplant, any private or industry funds or other contributions to program activities. The written explanation, if necessary, shall indicate why the Cooperator is unlikely to carry out the activities without Federal financial assistance. The certification shall also state that information contained in the application is true and accurate and that all records supporting the claim that project funds do not supplant other funds will be made available to authorized officials of the U.S. Government.

(b) *Strategic plan and performance measures.* All Cooperator program applications shall also contain:

(1) A description of the U.S. and world market situation for the eligible commodity;

(2) Data summarizing historical and projected U.S. production, U.S. exports to the world, world trade, and U.S. market share;

(3) A summary of proposed activity budgets by country or region;

(4) A summary of proposed administrative budgets by country or region;

(5) A list of all countries that define any designated region;

(6) For each country or region for which activities are proposed:

(i) A market assessment, including the constraint(s) impeding U.S. exports, the export growth opportunities, the performance of competing suppliers, expected changes in demand, etc.;

(ii) The long-term strategy that will be used to counteract the constraints and achieve additional U.S. exports;

(iii) Previous activities, performance, and evaluation results;

(iv) Projected export goals and U.S. market share; and

(v) Performance indicators against which future success in addressing the constraint(s) or opportunities may be measured;

(7) A description of all proposed activities, including the requested FAS resources and the specific goals and benchmarks to be used to measure the effectiveness of each activity;

(8) A justification for any new overseas office, including a list of job titles, corresponding position descriptions, salary ranges, and any request for approval of salaries above the Foreign Service National (FSN) salary plan. To request approval of a salary above the FSN salary plan, the Cooperator shall include a detailed description of both the duties and responsibilities of the position, and of the qualifications and background of the individual concerned. The Cooperator shall also justify, based on a verifiable local salary survey or other documented local salary information, why the highest FSN salary level is inappropriate.

§ 1484.21 How does FAS determine which Cooperator program applications are approved?

(a) *General.* FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify those projects that would demonstrate a

clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country or region goals. These performance indicators are part of FAS' resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan and address the performance measurement objectives of the GPRA.

(b) *Approval criteria.* FAS will consider a number of factors when reviewing proposed projects, including:

(1) The ability of the organization to provide an experienced U.S.-based staff with technical and international trade expertise to ensure adequate development, supervision, and execution of the proposed project;

(2) The organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties;

(3) The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;

(4) The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of foreign markets;

(5) The degree to which the strategic plan is coordinated with other private or U.S. government-funded market development projects;

(6) Past program results and evaluations, if applicable; and

(7) Previous Cooperator program funding.

§ 1484.22 How are Cooperator program funds allocated?

After determining which applications to recommend for approval, the Commodity Divisions recommend funding levels for the approved applicants within their respective divisions. Applications then compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor). Data used in the calculations for contribution levels, past export performance and past demand expansion performance will cover not more than a 6-year period, to the extent such data is available. The method for applying the following criteria will be described in the Cooperator program announcement in the FEDERAL REGISTER:

(a) Contribution Level (40%).

(b) Past Export Performance (20%).

(c) Past Demand Expansion Performance (20%).

(d) Future Demand Expansion Goals (10%).

(e) Accuracy of Past Demand Expansion Projections (10%).

Subpart C—Program Operations

§ 1484.30 How does FAS formalize its working relationship with approved Cooperators?

FAS will notify each applicant in writing of the final disposition of its application. FAS will send a program agreement, allocation approval letter, and a signature card to each approved applicant. The allocation approval letter will specify any special terms and conditions applicable to a Cooperator's program, including the required level of Cooperator contribution. An applicant that accepts the terms and conditions contained in the program agreement and allocation approval letter should so indicate by having its Chief Executive Officer sign the program agreement and submit the signed agreement to the Director, Marketing Operations Staff, FAS, USDA. Final agreement shall occur when the Administrator signs the agreement on behalf of FAS. The application, the program agreement, the allocation approval letter, and this part shall establish the terms and conditions of a Cooperator agreement between FAS and the approved applicant.

§ 1484.31 Who acts on behalf of each Cooperator?

The Cooperator shall designate at least two individuals in its organization to sign program agreements, reimbursement claims, and requests. The Cooperator shall submit the signature card signed by those designated individuals and by the Cooperator's Chief Executive Officer to the Director, Marketing Operations Staff, FAS, USDA, prior to the start of the marketing plan year. The Cooperator shall immediately notify the Director of any changes in signatories (e.g., removal or

addition of individuals, name changes, etc.), and shall submit a revised signature card accordingly.

§ 1484.32 Must Cooperators follow specific employment practices?

(a) A Cooperator shall enter into written contracts with all overseas employees and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A Cooperator shall, in its overseas offices, conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A Cooperator may pay salaries or fees in any currency (U.S. or foreign) in conformance with contract specifications. Cooperators are cautioned to consult local laws regarding currency restrictions.

§ 1484.33 Must Cooperators follow certain financial management guidelines?

(a) A Cooperator shall implement and maintain a financial management system that conforms to generally accepted accounting principles.

(b) A Cooperator shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these provisions. Each Cooperator shall maintain all original records and documents relating to program activities for 5 calendar years following the end of the applicable marketing plan year and shall make such records and documents available upon request to authorized officials of the U.S. Government. A Cooperator shall also maintain all documents related to employment, such as employment applications, contracts, position descriptions, leave records, and salary changes; and all records pertaining to contractors. A Cooperator shall also maintain adequate documentation related to the proper disposition of all property purchased by the Cooperator and for which the Cooperator is reimbursed with program funds.

(c) A Cooperator shall maintain its records of expenditures and contributions in a manner that allows it to provide information by marketing plan year, country or region, 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 $25.00;

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

(4) Copies of reimbursement claims;

(5) An itemized list of claims charged to the Cooperator's FMD account;

(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, and travel vouchers; and

(7) Documentation supporting contributions including: the date(s), purpose, and location(s) of each activity for which cash, goods, or services were claimed as a contribution; who conducted the activity; the participating groups or individuals; and the method of computing the claimed contributions. Cooperators must retain, and make available for audit, documentation related to claimed contributions.

(d) Upon request, a Cooperator shall provide to FAS the original documents which support the Cooperator's reimbursement claims. FAS may deny a claim for reimbursement if the claim is not supported by adequate documentation.

§ 1484.34 Must Cooperators adhere to specific standards of ethical conduct?

(a) A Cooperator shall conduct its business in accordance with the laws and regulations of the country(s) in which each activity is carried out.

(b) Neither a Cooperator nor its affiliates shall make export sales of agricultural commodities covered under the terms of a project agreement. Neither a Cooperator nor its affiliates

shall charge a fee for facilitating an export sale. For the purposes of this paragraph, ''affiliate'' means any partnership, association, company, corporation, trust, or any other such party in which the Cooperator has an investment, other than a mutual fund. A Cooperator may collect check-off funds and membership fees that are required for membership in the Cooperator's organization.

(c) The Cooperator shall not use program activities or program funds to promote private self interests or conduct private business, except as members of sales teams.

(d) A Cooperator shall select U.S. agricultural industry representatives to participate in activities such as trade teams or trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested, a Cooperator shall submit such selection criteria to FAS for approval.

(e) All Cooperators should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a project agreement.

(f) The Cooperator must report any actions or circumstances that have a bearing on the propriety of program activities to the Attache/Counselor and the Cooperator's U.S. office shall report such actions in writing to the appropriate Division Director.

§ 1484.35 Must Cooperators follow specific contracting procedures?

(a) Cooperators have full and sole responsibility for the legal sufficiency of all contracts and assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the Cooperator. Neither FAS nor any other agency of the United States Government or any official or employee of FAS or the United States Government has any obligation or responsibility with respect to Cooperator contracts with third parties.

(b) Cooperators are responsible for ensuring to the extent possible that the terms, conditions, and costs of contracts constitute the most economical and effective use of project funds.

(c) All fees for professional and consulting services paid in any part with project funds must be covered by written contracts.

(d) A Cooperator shall:

(1) Ensure that all expenditures for goods and services in excess of $25.00, which are reimbursed with project funds, are documented by a purchase order, invoice, or contract;

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

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

(4) Base each solicitation for professional or consulting services on a clear and accurate description of the requirements for the services to be procured;

(5) Perform some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices; and

(6) Document the decision-making process.

[64 FR 52630, Sept. 30, 1999. Redesignated and amended at 65 FR 9995, Feb. 25, 2000]

§ 1484.36 How do Cooperators dispose of disposable property?

(a) Property purchased by the Cooperator, and for which the Cooperator is reimbursed with project funds, that is unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways. The Cooperator may:

(1) Exchange or sell the property, provided that it applies any exchange allowance, insurance proceeds, or sales proceeds toward the purchase of other property needed in the project;

(2) With FAS approval, transfer the goods to other Cooperators for their activities, or to a foreign third party; or

(3) Upon Attache/Counselor approval, donate the goods to a local charity, or

convey the goods to the Attache/Counselor, along with an itemized inventory list and any documents of title.

(b) A Cooperator shall maintain an inventory of all property valued at $500 or more which was acquired in furtherance of program activities. The inventory shall list and number each item and include the date of purchase or acquisition, cost of purchase, replacement value, serial number, make, model, and electrical requirements.

(c) The Cooperator shall insure all property which was acquired with program funds and safeguard such property against theft, damage, and unauthorized use. The Cooperator shall promptly report any loss, theft, or damage of such property to the insurance company.

(d) The Cooperator is responsible for reimbursing FAS for the value of any uninsured property at the time of the loss or theft of the property.

[64 FR 52630, Sept. 30, 1999. Redesignated and amended at 65 FR 9995, 9996, Feb. 25, 2000]

§ 1484.37 Must Cooperators adhere to Federal Travel Regulations?

Travel shall conform to the U.S. Federal Travel Regulation (41 CFR Chapters 300 through 304) and air travel shall conform to the requirements of the ''Fly America Act'' (49 U.S.C. 1517). The Cooperator shall notify the Attache/Counselor in the destination countries in writing in advance of any proposed travel. The timing of such notice should be far enough in advance to enable the Attache/Counselor to schedule appointments, make preparations, or otherwise provide any assistance being requested. Failure to provide advance notification of travel may result in disallowance of the expenses related to the travel.

§ 1484.38 Can a Cooperator keep proceeds generated from an activity?

Any income or refunds generated from an activity, i.e., participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed, shall be repaid by submitting a check payable to Commodity Credit Corporation or by offsetting the Cooperator's next reimbursement claim.

[64 FR 52630, Sept. 30, 1999. Redesignated and amended at 65 FR 9995, 9996, Feb. 25, 2000]

Subpart D—Contributions and Reimbursements

§ 1484.50 What cost share contributions are eligible?

(a) The Cooperator shall pay all costs necessary for the operation of the Cooperator's U.S. office.

(b) In calculating the amount of contributions that it will make, and the contributions it will receive from a U.S. industry or a State agency, a Cooperator program applicant may include the costs (or such prorated costs) listed under paragraph (c) of this section if:

(1) Expenditures will be made in furtherance of the Cooperator's overall foreign market development program;

(2) The contributor has not been or will not be reimbursed by any other source for such costs; and

(3) The contribution is made during the period covered by the project agreement.

(c) Subject to paragraph (b) of this section, eligible contributions are:

(1) Cash;

(2) Compensation paid to personnel;

(3) The cost of acquiring materials, supplies, or services;

(4) The cost of office space;

(5) A reasonable and justifiable proportion of general administrative costs and overhead;

(6) Payments for indemnity and fidelity bond expenses;

(7) The cost of business cards;

(8) The cost of seasonal greeting cards;

(9) Fees for office parking;

(10) The cost of subscriptions to publications;

(11) The cost of activities conducted overseas;

(12) Credit card fees;

(13) The cost of any independent evaluation or audit that is not required by FAS to ensure compliance with program requirements;

(14) The cost of giveaways, awards, prizes and gifts;

(15) The cost of product samples;

(16) Fees for participating in U.S. government activities;

(17) The cost of air and local travel in the United States related to a foreign market development effort;

(18) Transportation and shipping costs;

(19) The cost of displays and promotional materials;

(20) Advertising costs;

(21) Reasonable travel costs and expenses related to undertaking a foreign market development activity;

(22) Payment of employee's or contractor's share of personal taxes;

(23) The cost associated with trade shows, seminars, entertainment and STRE conducted in the United States;

(24) Product research that is undertaken to benefit an industry and has a specific export application; and

(25) Consumer promotions.

§ 1484.51 What are ineligible contributions?

(a) The following are not eligible contributions:

(1) Any portion of salary or compensation of an individual who is the target of a promotional activity;

(2) Any land costs other than allowable costs for office space;

(3) Depreciation;

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

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

(6) The cost of any arrangement which has the effect of reducing the selling price of an agricultural commodity;

(7) The cost of product development or product modifications;

(8) Slotting fees or similar sales expenditures;

(9) Funds, services, or personnel provided by any U.S. government agency;

(10) Capital investments made by a third party, such as permanent structures, real estate, and the purchase of office equipment and furniture;

(11) The value of any services generated by a Cooperator or third party which involve no expenditure by the Cooperator or third party, e.g., free publicity;

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

(13) costs included as contributions for any other federally-assisted project or program.

(b) The Deputy Administrator shall determine, at the Deputy Administrator's discretion, whether any cost not expressly listed in this section may be included by the Cooperator as an eligible contribution.

§ 1484.52 What are the guidelines for computing the value of non-cash contributions?

(a) *Computing the value of an individual's time.* If an individual's salary is known, allocate the individual's salary on the basis of time spent on foreign market development activities. If the individual's salary is unknown, claim up to the equivalent of a step 10, GS–15 for professional personnel and up to the current estimated industry rate at the person's level of employment for nonprofessional personnel.

(b) *Computing the value of indirect expenditures.* Allocate value on the basis of sound management and accounting procedures when considering indirect expenditures, such as overhead and facilities, which are furnished by the industry.

§ 1484.53 What are the requirements for documenting and reporting contributions?

(a) Each claimed contribution must be documented by the Cooperator, showing the method of computing non-cash contributions, salaries, and travel expenses.

(b) Each Cooperator must keep records of the methods used to compute the value of non-cash contributions, and

(1) Copies of invoices or receipts for expenses paid by the U.S. industry and not reimbursed by the Cooperator for the joint activity; or

(2) If invoices are not available, an itemized statement from the U.S. industry as to what costs it incurred pursuant to the joint activity; or

(3) If neither of the foregoing is available, a statement from the U.S. industry as to what goods and services it provided; or

(4) If none of the foregoing are available, a memo to the files of the U.S.

Cooperator's estimate of what contributions were made by the U.S. industry, item by item, and the method used to assign a value to each.

(c) Each Cooperator must report its contributions as described in § 1550.70 (a).

§ 1484.54 What expenditures may FAS reimburse under the Cooperator program?

(a) A Cooperator may seek reimbursement for an expenditure if:

(1) The expenditure is reasonable and has been made in furtherance of a market development activity; and

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

(b) Subject to paragraph (a) of this section, FAS will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising in print or electronic media or on billboards or posters;

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

(3) Direct mail advertising;

(4) Food service promotions, product demonstrations to the trade, and distribution of promotional samples;

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

(6) Fees for participation in retail and trade exhibits and shows, and booth construction and transportation of related materials to such exhibits and shows;

(7) Trade seminars, including space rental, equipment rental, and duplication of seminar materials;

(8) Production and distribution of publications;

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

(10) Giveaways, awards, prizes, gifts, and other similar promotional materials, subject to the limitation that FAS will not reimburse more than $1.00 per item;

(11) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to U.S. citizen employees or U.S. citizen contractors stationed overseas, subject to the limitation that FAS shall not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15, Step 10 salary for U.S. Government employees, and

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(12) Foreign transfer, temporary lodging, and post hardship differential allowances for U.S. citizen employees;

(13) Approved salaries or compensation for non-U.S. citizens and non-U.S. contractors. Generally, FAS will not reimburse any portion of a non-U.S. citizen employee's compensation that exceeds the compensation prescribed for the most comparable position in the Foreign Service National (FSN) salary plan applicable to the country in which the employee works. However, if the local FSN salary plan is inappropriate, a Cooperator may request a higher level of reimbursement for a non-U.S. citizen in accordance with § 1550.20 (b)(8);

(14) A retroactive salary adjustment that conforms to a change in FSN salary plans, effective as of the date of such change;

(15) Accrued annual leave at such time when employment is terminated or when required by local law;

(16) Overtime paid to clerical staff;

(17) Fees for professional and consultant services;

(18) Air travel, plus passports, visas, and inoculations, subject to the limitation that FAS will not reimburse any portion of air travel in excess of the full fare economy rate or when the Cooperator fails to notify the Attaché/Counselor in the destination country in advance of the travel, unless the Deputy Administrator determines it was impractical to provide such notification;

(19) Per diem, subject to the limitation that FAS will not reimburse per diem in excess of the rates allowed under the U.S. Federal Travel Regulation (41 CFR Chapters 300 through 304);

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

(21) Other allowable expenditures while in travel status as authorized by

the U.S. Federal Travel Regulation (41 CFR Chapters 300 through 304);

(22) An overseas office, including rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums, and legal and accounting services;

(23) The purchase, lease, or repair of, or insurance premiums for, property that has an expected useful life of at least one year, such as furniture, equipment, machinery, removable fixtures, floor coverings, and computer hardware and software;

(24) Office decor, such as draperies or blinds;

(25) Premiums for health or accident insurance or other benefits for foreign national employees that the employer is required by law to pay;

(26) Accident liability insurance premiums for facilities used jointly with third party participants for Cooperator program activities, or such insurance premiums for travel of non-Cooperator personnel;

(27) Market research;

(28) Evaluations, if not required by FAS to ensure compliance with program requirements;

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

(30) Employment agency fees;

(31) STRE, including breakfast, lunch, dinner, receptions, and refreshments at activities; miscellaneous courtesies such as checkroom fees, taxi fares, and tips; and decorations for a special promotional occasion;

(32) Educational travel of dependent children, visitation travel, rest and recuperation travel, home leave travel, and emergency visitation travel for U.S. overseas employees as allowed under the Foreign Affairs Manual;

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

(34) Demonstration projects;

(35) Purchase of trade and business periodicals containing material related to market development activities for use by overseas staffs;

(36) Training expenses in the U.S. for FSNs;

(37) Language training for U.S. citizen employees at the foreign post of assignment;

(38) Forward year financial obligations required by local law or custom; such as severance pay, attributable to employment of foreign nationals; or forfeiture of rent or deposits, attributable to the closure of an office;

(39) Fees for storage of necessary program materials;

(40) Shipment of samples or other program materials from the U.S. to foreign countries; and

(41) That portion of airtime for wireless phones that is devoted to program activities and monthly service fees prorated at the proportion of program-related airtime to total airtime.

§ 1484.55 What expenditures may not be reimbursed under the Cooperator program?

(a) FAS will not reimburse expenditures made prior to approval of a Cooperator's program, unreasonable expenditures, or any cost of:

(1) Expenses, fines, settlements, or claims resulting from suits, challenges, or disputes emanating from employment terms, conditions, contract provisions, or related formalities;

(2) Product development, product modification, or product research;

(3) Product samples;

(4) Slotting fees or similar sales expenditures;

(5) The purchase, construction, or lease of space for permanent displays, i.e., displays lasting beyond one marketing plan year;

(6) Office parking fees;

(7) Coupon redemption or price discounts;

(8) Refundable deposits or advances;

(9) Giveaways, awards, prizes, gifts, and other similar promotional materials in excess of $1.00 per item;

(10) Alcoholic beverages that are not an integral part of a promotional activity;

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

(12) Travel of applicants for employment interviews;

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

(14) Any arrangement which has the effect of reducing the selling price of an agricultural commodity;

(15) Goods and services and salaries of third party personnel;

(16) Membership fees in clubs and social organizations;

(17) Indemnity and fidelity bonds;

(18) Fees for participating in U.S. Government sponsored activities, other than trade fairs, shows, and exhibits;

(19) Business cards;

(20) Seasonal greeting cards;

(21) Subscriptions to non-trade related publications;

(22) Credit card fees;

(23) Refreshments, or related equipment, for office staff;

(24) Insurance on household goods and personal effects, including privately-owned automobiles, whether overseas or stored in the U.S., belonging to U.S. citizen employees;

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

(26) Payment of U.S. or foreign employee's or contractor's share of personal taxes, except as legally required in a foreign country;

(27) Wireless phone equipment, equipment repair, insurance, and other related charges;

(28) STRE expenses incurred in the U.S;

(29) Entertainment, e.g., amusements, diversions, cover charges, personal gifts, or tickets to theatrical or sporting events;

(30) Functions (including receptions and meals at Cooperator staff conferences) at which target groups, such as members of the overseas trade, opinion leaders, foreign government officials, and other similar groups, are not present; or

(31) Promotions directed at consumers purchasing in their individual capacity.

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

(c) FAS will reimburse for expenses incurred up to 30 calendar days beyond the conclusion of the marketing plan year.

§ 1484.56 How are Cooperators reimbursed?

(a) A format for reimbursement claims is available from the Director, Marketing Operations Staff, FAS, USDA. Claims for reimbursement shall contain at least the following information:

(1) Activity code;

(2) Country code;

(3) Cost category;

(4) Amount to be reimbursed or credited;

(5) If applicable, any reduction in the amount of reimbursement claimed to offset FAS demand for refund of amounts previously reimbursed, and reference to the relevant Compliance Report; and

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

(b) All claims for reimbursement shall be submitted by the Cooperator's U.S. office to the Director, Marketing Operations Staff, FAS, USDA.

(c) FAS will not reimburse claims submitted later than 6 months after the end of a marketing plan year.

(d) If FAS overpays a reimbursement claim, the Cooperator shall repay FAS within 30 days the amount of the overpayment either by submitting a check payable to FAS or by offsetting its next reimbursement claim.

(e) If a Cooperator receives a reimbursement or offsets an advanced payment which is later disallowed, the Cooperator shall within 30 days of such disallowance repay FAS the amount owed either by submitting a check payable to FAS or by offsetting its next reimbursement claim.

(f) The Cooperator shall report any actions having a bearing on the propriety of any claims for reimbursement to the Attache/Counselor and its U.S. office shall report such actions in writing to the Division Director(s).

§ 1484.57 Will FAS make advance payments to a Cooperator?

(a) *Policy*. In general, FAS operates the Cooperator program on a reimbursable basis.

(b) *Exception*. Upon request, FAS may make two types of advance payments to a Cooperator. The first is a revolving fund operating advance provided by

FAS only to Cooperators with foreign offices supported with project funds. The second is a special advance payment used to pay an impending large cost item. FAS will provide this type of advance expense payment in lieu of direct payments by FAS to vendors or other third parties. All Cooperators, with or without project fund-supported foreign offices, are eligible to request special advance payments. Normally, special advance payments received from FAS must be liquidated by the Cooperator within 90 days from the date of receipt. Prior to making an advance, FAS may require the participant to submit security in a form and amount acceptable to FAS to protect FAS' financial interests. FAS will not make any special advance payment to a Cooperator where a special advance is outstanding from a prior marketing plan year. Cooperators shall deposit and maintain advances in insured, interest-bearing accounts, unless such accounts are prohibited by law or custom of a host country.

(c) *Refunds due FAS.* A participant shall return any unexpended portion of an advance, plus any interest earned, either by submitting a check payable to FAS or by offsetting its next reimbursement claim. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

Subpart E—Reporting, Evaluation, and Compliance

§ 1484.70 Must Cooperators report to FAS?

(a) *End-of-year contribution report.* Not later than January 31 of the year following the completion of the marketing plan year, a Cooperator shall submit two copies of a report which identifies contributions made by the Cooperator and the U.S. industry during that marketing plan year. A suggested format of a contribution report is available on the FAS home page (http://www.fas.usda.gov/mos/programs/fnotice.html) on the Internet or from the Director, Marketing Operations Staff, FAS, USDA.

(b) *Trip reports.* Not later than 45 days after completion of travel (other than local travel), a Cooperator shall 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, or specific accomplishments.

(c) *Research reports.* Not later than 6 months after the end of its marketing plan year, a Cooperator shall submit a report on any research conducted in accordance with its application.

(d) *Submission of reports.* A Cooperator shall submit the reports required by this section to the appropriate Division Director. Trip reports and research reports shall also be submitted to the appropriate Attache/Counselor(s). All reports shall be in English and include the Cooperator's agreement number, the countries and period covered, and the date of the report.

(e) *Additional reports.* FAS may require the submission of additional reports.

(f) *Independent audit reports.* A Cooperator shall provide to the FAS Compliance Review Staff, upon request, any audit reports by independent public accountants.

§ 1484.71 Are Cooperator documents subject to the provisions of the Freedom of Information Act?

(a) Documents submitted to FAS by Cooperators 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 1.11—Handling Information from a Private Business.

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

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

§ 1484.72 How is program effectiveness measured?

(a) 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 Cooperator program. Evaluation of the Cooperator program's effectiveness will depend on a clear statement by each Cooperator of the constraints and opportunities facing U.S. exports, goals to be met within a specified time, a schedule of measurable milestones for gauging success, a plan for achievement, and reports of activity results.

(b) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a Cooperator's program, contribute to program accountability, and provide evidence of program effectiveness.

(c) A Cooperator shall conduct periodic evaluations of its program and activities and may contract with an independent evaluator to satisfy this requirement. FAS reserves the right to have direct input and control over design, scope, and methodology of any such evaluation, including direct contact with and provision of guidance to the independent evaluator.

(d) A Cooperator shall complete at least one program evaluation each year. Actual scope and timing of the program evaluation shall be determined by the Cooperator and the Division Director and specified in the Cooperator's application approval letter. A program evaluation shall contain:

(1) The name of the party conducting the evaluation;

(2) The activities covered by the evaluation;

(3) A concise statement of the constraint(s) and opportunities and the goals specified in the application;

(4) A description of the evaluation methodology;

(5) A description of additional export sales achieved, including the ratio of additional export sales in relation to Cooperator program funding received;

(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) A Cooperator shall submit, via a cover letter to the Division Director, an executive summary which assesses the program evaluation's findings and recommendations and proposes changes in program strategy or design as a result of the evaluation.

§ 1484.73 Are Cooperators penalized for failing to make required contributions?

A Cooperator's contribution requirement is specified in the Cooperator program allocation letter. If a Cooperator fails to contribute the amount specified in its allocation approval letter, the Cooperator shall pay to Commodity Credit Corporation in U.S. dollars the difference between the amount it has contributed and the amount specified in the allocation approval letter. A Cooperator shall remit such payment by December 31 following the end of the marketing plan year.

[64 FR 52630, Sept. 30, 1999. Redesignated and amended at 65 FR 9995, 9996, Feb. 25, 2000]

§ 1484.74 How is Cooperator program compliance monitored?

(a) The Compliance Review Staff (CRS), FAS, performs periodic on-site reviews of Cooperators to ensure compliance with this part.

(b) In order to verify that federal funds received by a Cooperator do not supplant private or U.S. industry funds or contributions pursuant to § 1550.20(a)(14), FAS will consider the Cooperator's overall marketing budget from year to year, variations in promotional strategies within a country or region, and new markets.

(c) The Director, CRS, will notify a Cooperator through a compliance report when it appears that Commodity Credit Corporation may be entitled to recover funds from that Cooperator. The compliance report will state the basis for this action.

[64 FR 52630, Sept. 30, 1999. Redesignated and amended at 65 FR 9995, 9996, Feb. 25, 2000]

§ 1484.75 How does a Cooperator respond to a compliance report?

(a) A Cooperator shall, within 60 days of the date of the compliance report, submit a written response to the Director, CRS. This response shall include any money owed to Commodity Credit Corporation if the Cooperator does not wish to contest the compliance report. The Director, CRS, at the Director's

discretion, may extend the period for response up to an additional 30 days. If the Cooperator does not respond to the compliance report within the required time period or, if after review of the Cooperator's response, the Director, CRS, determines that Commodity Credit Corporation may be entitled to recover funds from the Cooperator, the Director, CRS, will refer the compliance report to the Deputy Administrator.

(b) If, after review of the compliance report and response, the Deputy Administrator determines that the Cooperator owes money to Commodity Credit Corporation, the Deputy Administrator will so inform the Cooperator. The Deputy Administrator may initiate action to collect such amount pursuant to 7 CFR Part 1403, Debt Settlement Policies and Procedures. Determinations of the Deputy Administrator will be in writing and in sufficient detail to inform the Cooperator of the basis for the determination. The Cooperator has 30 days from the date of the Deputy Administrator's initial determination to submit any money owed to Commodity Credit Corporation or to request reconsideration.

[64 FR 52630, Sept. 30, 1999. Redesignated and amended at 65 FR 9995, 9996, Feb. 25, 2000]

§ 1484.76 Can a Cooperator appeal the determinations of the Deputy Administrator?

(a) The Cooperator may appeal the determinations of the Deputy Administrator to the Administrator. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days following the date of the initial determination by the Deputy Administrator or the determination on reconsideration. The Cooperator may request a hearing.

(b) If the Cooperator submits its appeal and requests a hearing, the Administrator, or the Administrator's designee, will set a date and time, generally within 60 days. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Cooperator bears the cost of a transcript; however, the Administrator may have a transcript prepared at FAS's expense.

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

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

Subpart A [Reserved]

Subpart B—Market Access Program

Sec.
1485.10 General purpose and scope.
1485.11 Definitions.
1485.12 Participation eligibility.
1485.13 Application process and strategic plan.
1485.14 Application approval and formation of agreements.
1485.15 Activity plan.
1485.16 Reimbursement rules.
1485.17 Reimbursement procedures.
1485.18 Advances.
1485.19 Employment practices.
1485.20 Financial management, reports, evaluations and appeals.
1485.21 Failure to make required contribution.
1485.22 Submissions.
1485.23 Miscellaneous provisions.
1485.24 Applicability date.
1485.25 Paperwork reduction requirement.

AUTHORITY: 7 U.S.C. 5623, 5662–5664 and sec. 1302, Pub. L. 103–66, 107 Stat. 330.

SOURCE: 60 FR 6363, Feb. 1, 1995, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1485 appear at 61 FR 58780, Nov. 19, 1996.

Subpart A [Reserved]

Subpart B—Market Access Program

§ 1485.10 General purpose and scope.

(a) This subpart sets forth the policies underlying the Commodity Credit

Corporation's (CCC) operation of the Market Access Program (MAP), and a subcomponent of that program, the Export Incentive Program/Market Access Program (EIP/MAP). It also establishes the general terms and conditions applicable to MAP and EIP/MAP agreements.

(b) Under the MAP, CCC enters into agreements with nonprofit trade organizations to share the costs of certain overseas marketing and promotion activities that are intended to develop, maintain or expand commercial export markets for U.S. agricultural commodities and products. MAP participants may receive assistance for either generic or brand promotion activities. EIP/MAP participants are U.S. commercial entities that receive assistance for brand promotion activities.

(c) The MAP and EIP/MAP generally operate on a reimbursement basis, and CCC may, at its option, provide such reimbursement either in cash or in CCC commodity certificates.

(d) CCC's policy is to ensure that benefits generated by MAP and EIP/MAP agreements are broadly available throughout the relevant agricultural sector and no one entity gains an undue advantage. The MAP and EIP/MAP are administered by personnel of the Foreign Agricultural Service.

§ 1485.11 Definitions.

For purposes of this subpart the following definitions apply:

Activity—a specific market development effort undertaken by a participant.

Activity plan—a document which details a participant's proposed activities and budget. (*Activity plan* is used in lieu of the term *Marketing plan* to avoid administrative confusion with plans submitted under the Cooperator Foreign Market Development Program.)

Administrator—the Administrator, FAS, USDA, or designee.

Agricultural commodity—an agricultural commodity, food, feed, fiber, wood, livestock or insect, and any product thereof; and fish harvested from a U.S. aquaculture farm, or harvested by a vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

APAR—activity plan amendment request.

Attache/Counselor—the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Brand promotion—an activity that involves the exclusive or predominant use of a single company name or logo(s) or brand name(s) of a single company.

CCC—the Commodity Credit Corporation.

Contribution—the cost-share expenditure made by a participant in support of an approved activity.

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

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

Deputy Administrator—the Deputy Administrator, Commodity and Marketing Programs, FAS, USDA, or designee.

Division Director—the director of a commodity division, Commodity and Marketing Programs, FAS, USDA.

EIP/MAP—the Export Incentive Program/Market Access Program.

EIP/MAP participant—a U.S. commercial entity which has entered into an EIP/MAP agreement with CCC.

Eligible commodity—the agricultural commodity that is represented by an applicant.

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

Exported commodity—an agricultural commodity that is sold to buyers in, or is donated to, a foreign country.

FAS—Foreign Agricultural Service, USDA.

Foreign third party—a foreign entity that assists, in accordance with an approved activity plan, in promoting the export of a U.S. agricultural commodity.

Generic promotion—a promotion that is not a brand promotion.

Market—a country in which an activity is conducted.

MAP—the Market Access Program.

MAP participant—an entity which has entered into an MAP agreement with CCC.

Participant—a entity which has entered into an agreement with CCC.

Promoted commodity—an agricultural commodity whose sale is the intended result of a promotion activity.

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

Small-sized entity—a U.S. commercial entity which meets the small business size standards published at 13 CFR part 121, Small Business Size Regulations.

SRTG—an association of State Departments of Agriculture referred to as State Regional Trade Group(s).

STRE—sales and trade relations expenditures.

Supergrade—a salary level designation that is applicable to certain non-U.S. employees who direct participants' overseas offices.

Trade team—a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

Unfair trade practice—an act, policy, or practice of a foreign government that:

(1) Violates, is inconsistent with, or otherwise denies benefits to the United States under, any trade agreement to which the United States is a party; or

(2) Is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

U.S. commercial entity—an agricultural cooperative, producer association authorized by 7 U.S.C. 291, or for-profit firm located and doing business in the United States, and engaged in the export or sale of an agricultural commodity.

U.S. industry contribution—the expenditure made by the U.S industry in support of an approved activity.

USDA—the United States Department of Agriculture.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 32644, June 25, 1996; 61 FR 58780, Nov. 19, 1996; 63 FR 29940, June 2, 1998; 63 FR 32041, June 11, 1998]

§ 1485.12 Participation eligibility.

(a) To participate in the MAP, an entity:

(1) Shall be:

(i) A nonprofit U.S agricultural trade organization;

(ii) A nonprofit state regional trade group;

(iii) A U.S. agricultural cooperative; or

(iv) A State agency; and

(2) Shall contribute:

(i) In the case of generic promotion, at least 10 percent of the value of resources provided by CCC for such generic promotion; or

(ii) In the case of brand promotion, at least 50 percent of the total cost of such brand promotions.

(b) To participate in the EIP/MAP, an entity:

(1) Shall be a U.S. commercial entity that either owns the brand(s) of the agricultural commodity to be promoted or has the exclusive rights to use such brand(s);

(2) Shall contribute at least 50 percent of the total cost of the brand promotion; and

(3) That is a for-profit firm, other than a cooperative or producer association authorized by 7 U.S.C. 291, shall be a small sized entity.

(c) CCC may require a contribution level greater than that specified in paragraphs (a) and (b) of this section. In requiring a higher contribution level, CCC will take into account such factors as past participant contributions, previous MAP funding levels, the length of time an entity participates in the program and the entity's ability to increase its contribution.

(d) CCC may require an EIP/MAP applicant to participate through an MAP participant.

(e) CCC will enter into MAP or EIP/MAP agreements only where the eligible agricultural commodity is comprised of at least 50 percent U.S. origin content by weight, exclusive of added water.

(f) CCC will not enter into an MAP or EIP/MAP agreement for the promotion of tobacco or tobacco products.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 58780, Nov. 19, 1996]

§ 1485.13 Application process and strategic plan.

(a) *General application requirements.* CCC will periodically publish a Notice in the FEDERAL REGISTER that it is accepting applications for participation in MAP and EIP/MAP. Applications shall be submitted in accordance with the terms and requirements specified in the Notice. An application shall contain basic information about the applicant and the proposed program, a program justification and a strategic plan.

(1) *Basic applicant and program information.* (i) All MAP and EIP/MAP applications shall contain:

(A) The name and address of the applicant;

(B) The name of the Chief Executive Officer;

(C) The name and telephone number of the applicant's primary contact person;

(D) The name(s) of the person(s) responsible for managing the program;

(E) Type of organization—see § 1485.12(a)(1);

(F) Tax exempt identification number, if applicable;

(G) Activity plan year (mm/dd/yy-mm/dd/yy);

(H) Dollar amount of CCC resources requested for generic activities;

(I) Dollar amount of CCC resources requested for brand activities;

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

(K) Total dollar amount of CCC resources requested;

(L) Percentage of CCC resources requested for general administrative costs and overhead; and

(M) Estimated cumulative carryover—i.e., the estimated amount of unexpended funds allocated to the applicant in any prior year;

(ii) Applications submitted by nonprofit entities shall also contain:

(A) A description of the organization;

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

(C) A list of affiliated organizations;

(D) A description of management and administrative capability;

(E) A description of prior export promotion experience;

(F) Value, in dollars, that the applicant will contribute;

(G) Applicant's contribution stated as a percent of 1(i)(K) above;

(H) Value, in dollar, of contributions from other sources;

(2) *Program justification.* (i) All MAP and EIP/MAP applications shall contain:

(A) A description of the eligible agricultural commodity(s), its harmonized system code, the commodity aggregate code and the percentage of U.S. origin content by weight, exclusive of added water;

(B) A description of the exported agricultural commodity(s), its harmonized system code, the commodity aggregate code and the percentage of U.S. origin content by weight, exclusive of added water;

(C) A description of the promoted agricultural commodity(s), its harmonized system code, the commodity aggregate code and the percentage of U.S. origin content by weight, exclusive of added water;

(D) A description of the anticipated supply and demand situation for the exported agricultural commodity(s);

(E) The volume and value of the exported agricultural commodity(s) for the most recent 3-year period;

(F) If the proposal is for two or more years, an explanation why the proposal should be funded on a multiyear basis; and

(G) A certification and, if requested by the Deputy Administrator, 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. The justification shall indicate why the participant is unlikely to carry out the activities without Federal financial assistance. In determining whether federal funds received supplemented or supplanted private or third party funds or contributions, CCC will consider the participant's overall marketing budget from year to year, variations in promotional strategies within a country and new markets.

(ii) Applications submitted by a small-sized entity seeking funds under an EIP/MAP agreement shall contain a certification that it is a small business

within the standards established by 13 CFR part 121. For purposes of determining size, a cooperative will be considered a single entity.

(iii) Applicants seeking funds for brand promotion shall contain the information required by §1485.16(g)(1) and (2) in order to justify a rate of reimbursement higher than specified therein.

(3) *Strategic plan.* (i) All MAP and EIP/MAP applications shall contain:

(A) A summary of proposed budgets by country and commodity aggregate code;

(B) A description of the world market situation for the exported agricultural commodity;

(C) A description of competition from other exporters, including U.S. firms, where applicable;

(D) A statement of goals and the applicant's plans for monitoring and evaluating performance towards achieving these goals.

(E) For each country, if applicable, five years of:

(*1*) historical U.S. export data;

(*2*) U.S. market share; and

(*3*) MAP funds received;

(F) For each country, three years of projected U.S. export data and U.S. market share;

(G) Country strategy, including constraint(s) impeding U.S. exports, strategy to overcome constraints, previous activities in the country, the projected impact of the proposed program on U.S. exports;

(H) A justification for any new overseas office;

(I) A description of any demonstration projects, if applicable (see §1485.13(d)(1) through (4));

(J) Data summarizing historical and projected exports, market share and MAP budgets for the world; and

(K) A description of overall program goals for the ensuing 3–5 years;

(ii) MAP applications for brand promotion assistance shall also contain:

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

(B) The criteria that will be used to allocate funds to U.S. and foreign commercial entities; and

(C) A justification for conducting a brand promotion program with foreign commercial entities, if applicable.

(b) CCC may request any additional information which it deems necessary to evaluate an MAP or EIP/MAP application. In particular, CCC may require additional performance measurement, as required by the Government Performance and Results Act of 1993.

(c) *Eligible contributions.* (1) In calculating the amount of contributions that it will make, and the contributions it will receive from a U.S. industry, a foreign third party or a State agency, the MAP applicant may include the costs (or such prorated costs) listed under paragraph (c)(2) of this section if:

(i) Expenditures will be made in furtherance of an approved activity, and

(ii) The contributor has not been or will not be reimbursed by any other source for such costs.

(2) Subject to paragraph (c)(1) of this section, eligible contributions are:

(i) Cash;

(ii) Compensation paid to personnel;

(iii) The cost of acquiring materials, supplies or services;

(iv) The cost of office space;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards;

(viii) The cost of seasonal greeting cards;

(ix) Fees for office parking;

(x) The cost of subscriptions to publications;

(xi) The cost of activities conducted overseas;

(xii) Credit card fees;

(xiii) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with program requirements;

(xiv) The cost of giveaways, awards, prizes and gifts;

(xv) The cost of product samples;

(xvi) Fees for participating in U.S. government activities;

(xvii) The cost of air and local travel in the United States;

(xviii) Payment of employee's or contractor's share of personal taxes; and

(xix) The cost associated with trade shows, seminars, entertainment and STRE conducted in the United States.

(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 in promoting membership in the participant organization or in promoting the MAP among its members (sometimes referred to in the industry as ''backsell'');

(iii) Any land costs other than allowable costs for office space;

(iv) Depreciation;

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

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

(vii) The cost of any arrangement which has the effect of reducing the selling price of an agricultural commodity;

(viii) The cost of product development, product modifications, or product research;

(ix) Slotting fees or similar sales expenditures;

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

(xi) Any expenditure for an activity prior to CCC's approval of that activity or amendment.

(4) The Deputy Administrator shall determine, at the Deputy Administrator's discretion, whether any cost not expressly listed in this section may be included by the participant as an eligible contribution.

(d) *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 market is a lack of technical knowledge or expertise;

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

(4) A third party participates in such project through a written agreement which provides that title to the structure, facility or equipment may transfer to the third party and that the MAP participant may use the structure, facility or equipment for a period specified in the agreement for the purpose of removing the constraint.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 32644, June 25, 1996; 63 FR 29940, June 2, 1998]

§ 1485.14 Application approval and formation of agreements.

(a) *General.* CCC will, consistent with available resources, approve those applications which 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 that cannot be mathematically measured—i.e., market opportunity, market strategy and management capability.

(b) *Approval criteria.* In assessing the applications it receives and determining which it will approve, CCC considers the following criteria:

(1) The effectiveness of program management;

(2) Soundness of accounting procedures;

(3) The nature of the applicant organization, with greater weight given to those organizations with the broadest base of producer representation;

(4) Prior export promotion or direct export experience;

(5) Previous MAP funding;

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

(i) Description of market conditions;

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

(iii) Reasonable likelihood of plan success;

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

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

(vi) Past program results and evaluations, if applicable.

(c) *Allocation factors.* After determining which applications to approve, CCC determines how it will allocate resources among participants based on

the following factors, in addition to those in paragraph (b) of this section:

(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 participant's, State's, and industry's contributions;

(5) Market share goals in target country(ies);

(6) The degree to which the product to be exported consists of U.S. grown agricultural commodities;

(7) The degree of value-added processing in the U.S.; and

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

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

(d) *Approval decision.* (1) CCC will approve those applications which it determines best satisfy the criteria and factors specified above. In addition, CCC will only approve applications for EIP/MAP when there is sufficient U.S. industry need for a brand promotion and there is no eligible MAP participant interested in or capable of undertaking the brand promotion.

(2) CCC will not provide assistance to a single company for brand promotion in a single country for more than five years. This five year period shall not begin prior to the 1994 program or the participant's first activity plan year, whichever is later. In limited circumstances, the five year limitation may be waived if the Deputy Administrator determines that further assistance is necessary in order to meet the objectives of the program.

(e) *Formation of agreements.* CCC will notify each applicant in writing of the final disposition of its application. CCC will send a program agreement, allocation approval letter and a signature card to each approved applicant. The allocation approval letter will specify any special terms and conditions applicable to a participant's program, including the required level of participant contribution. An applicant that decides to accept the terms and conditions contained in the program agreement and allocation approval letter should so indicate by having its Chief Executive Officer sign the program agreement and by submitting the signed agreement to the Director, Marketing Operations Staff, FAS, USDA. Final agreement shall occur when the Administrator signs the agreement on behalf of CCC. The application, the program agreement, the allocation approval letter and these regulations shall establish the terms and conditions of an MAP or EIP/MAP agreement between CCC and the approved applicant.

(f) Signature cards. The participant shall designate at least two individuals in its organization to sign program agreements, reimbursement claims and advance requests. The participant shall submit the signature card signed by those designated individuals and by the participant's Chief Executive Officer to the Director, Marketing Operations Staff, FAS, USDA, and shall immediately notify the Director of any changes in signatories and shall submit a revised signature card accordingly.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 32644, June 25, 1996; 63 FR 29940, June 2, 1998]

§ 1485.15 Activity plan.

(a) *General.* A participant shall develop a specific activity plan(s) based on its strategic plan and the allocation approval letter and shall submit an activity plan for each year in which it engages in program activities. An activity plan handbook, available from the Division Director, provides suggested formats and codes for activity plans and amendments.

(b) An activity plan shall contain:

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

(i) A short description of the relevant constraint;

(ii) A description of any changes in strategy from the strategic plan;

(iii) A budget for each proposed activity, identifying the source of funds;

(iv) Specific goals and benchmarks to be used to measure the effectiveness of each activity. This will assist CCC in carrying out its responsibilities under

the Government Performance and Results Act of 1993 that requires performance measurement of Federal programs, including the MAP. Evaluation of MAP's effectiveness will depend on a clear statement by participants of goals, method of achievement, and results of activities at regular intervals. The overall goal of the MAP and of individual participants' activities is to achieve additional exports of U.S. agricultural products, that is, sales that would not have occurred in the absence of MAP funding.

(2) A staffing plan for any overseas office, including a listing of job titles, position descriptions, salary ranges and any request for approval of supergrade salaries; and

(3) An itemized administrative budget for any overseas office.

(c) Activity plans for small-sized entities operating through an SRTG shall contain a certification that it is a small-sized entity within the standards established by 13 CFR part 121.

(d) *Requests for approval of ''supergrades''.* (1) Ordinarily, CCC will not reimburse any portion of a non-U.S. citizen employees compensation that exceeds the highest salary level in the Foreign Service National (FSN) salary plan applicable to the country in which the employee works. However, a participant may seek a higher level of reimbursement for a non-U.S. citizen who will be employed as a country director or regional director by requesting that CCC approve that employee as a ''supergrade''.

(2) To request approval of a ''supergrade'', the participant shall include in its activity plan a detailed description of both the duties and responsibilities of the position, and of the qualifications and background of the employee concerned. The participant shall also justify why the highest FSN salary level is insufficient.

(3) Where a non-U.S. citizen will be employed as a country director, the MAP participant may request approval for a ''Supergrade I'' salary level, equivalent to a grade increase over the existing top grade of the FSN salary plan. The ''supergrade'' and its step increases are calculated as the percentage difference between the second highest and the highest grade in the FSN salary plan with that percentage applied to each of the steps in the top grade. Where the non-U.S. citizen will be employed as a regional director, with responsibility for activities and/or offices in more than one country, the MAP participant may request approval for a ''Supergrade II'' salary level which is calculated relative to a ''Supergrade I'' in the same way the latter is calculated relative to the highest grade in the FSN salary plan.

(e) *Submission of the activity plan.* A participant shall submit three copies of an activity plan to the Division Director and a copy of the relevant country section(s) to the Attaché/Counselor(s) concerned.

(f) *Activity plan approval.* CCC shall indicate in an activity plan approval letter which activities and budgets are approved or disapproved, and shall indicate any special terms and conditions that apply to the participant including any requirements with respect to contributions and program evaluations. A participant may undertake promotional activities directly or through a foreign third party; however, the participant shall be responsible and accountable to CCC for all such promotional activities and related expenditures.

(g) *Activity plan changes.* (1) A participant may request changes to an activity plan by submitting one copy of an APAR to each of the Division Director and the Attaché/Counselor(s) concerned.

(2) An APAR for a new activity shall contain the information required in paragraph (b) of this section. All other APAR's shall contain the activity description, the proposed budget and a justification for transfer of funds, if applicable.

§ 1485.16 Reimbursement rules.

(a) A participant may seek reimbursement for an expenditure if:

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

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

(b) Subject to paragraph (a) of this section, CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising in print or electronic media or on billboards or posters;

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

(3) Direct mail advertising;

(4) In-store and food service promotions, product demonstrations to the trade and to consumers, and distribution of promotional samples;

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

(6) Expenditures, other than travel expenditures, associated with retail, trade, and consumer exhibits and shows; seminars; and educational training; including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials;

(7) International air travel, not to exceed the full fare economy rate, or other means of international transportation, and per diem, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) for no more than two representatives of a single brand participant to exhibit their company's products at a foreign trade show.

(8) Publications;

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

(10) Giveaways, awards, prizes, gifts and other similar promotional materials subject to the limitation that CCC will not reimburse more than $1.00 per item;

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

(c) Subject to paragraph (a) of this section, but for generic promotion activities only, CCC will also reimburse, in whole or in part, the cost of:

(1) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to a U.S. citizen employee or a U.S. citizen contractor stationed overseas subject to the limitation that CCC shall not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15 Step 10 salary for U.S. Government employees, and

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(2) Approved ''supergrade'' salaries for non-U.S. citizens and non-U.S. contractors;

(3) Compensation of a non-U.S. citizen staff employee or non-U.S. contractor subject to the following limitations:

(i) Where there is a local U.S. Embassy Foreign Service National (FSN) salary plan, CCC shall not reimburse any portion of such compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan, or

(ii) Where an FSN salary plan does not exist, CCC will not reimburse any portion of such compensation that exceeds locally prevailing levels which the MAP participant shall document by a salary survey or other means.

(4) A retroactive salary adjustment that conforms to a change in FSN salary plans, effective as of the date of such change;

(5) Accrued annual leave at such time when employment is terminated or when required by local law;

(6) Overtime paid to clerical staff;

(7) Daily contractor fees subject to the limitation that CCC will not reimburse any portion of 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;

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

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

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

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

(12) An overseas office, including rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums and legal and accounting services;

(13) The purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least one year such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, computer hardware and software;

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

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

(16) Market research;

(17) Evaluations, if not required by CCC to ensure compliance with program requirements;

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

(19) Employment agency fees;

(20) STRE including breakfast, lunch, dinner, receptions and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares and tips; and decorations for a special promotional occasion;

(21) Educational travel of dependent children, visitation travel, rest and recuperation travel, home leave travel, emergency visitation travel for U.S. overseas employees allowed under the Foreign Affairs Manual, Foreign Affairs Manual, OIS/RA/PSG, Room B–264 Main State, Washington, D.C. 20520, Telephone: 202–736–4881, FAX: 202–736–7214.

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

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

(24) Generic commodity promotions (see § 1486.16(f));

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

(26) Demonstration projects.

(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 claims resulting from suits, challenges or disputes emanating from employment terms, conditions, contract provisions and related formalities;

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

(4) Product development, product modification or product research;

(5) Product samples;

(6) Slotting fees or similar sales expenditures;

(7) The purchase, construction or lease of space for permanent displays, i.e., displays lasting beyond one activity plan year;

(8) Rental, lease or purchase of warehouse space;

(9) Coupon redemption or price discounts;

(10) Refundable deposits or advances;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials in excess of $1.00 per item;

(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 is restricted by U.S. government action or advisory;

(16) Independent evaluation or audit, including activities of the subcontractor if CCC determines that such a

review is needed in order to ensure program compliance;

(17) Any arrangement which has the effect of reducing the selling price of an agricultural commodity;

(18) Goods and services and salaries of personnel provided by U.S. industry or foreign third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs and exhibits;

(22) Business cards;

(23) Seasonal greeting cards;

(24) Office parking fees;

(25) Subscriptions to publications;

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

(27) [Reserved]

(28) Payment of U.S. and foreign employees or contractors share of personal taxes, except as legally required in a foreign country, and;

(29) Any expenditure made for an activity prior to CCC's approval of that activity or amendment.

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

(f) For a generic promotion activity involving the use of company names, logos or brand names, the MAP participant must ensure that all companies seeking to promote U.S. agricultural commodities have an equal opportunity to participate in the activity.

(g) For a brand promotion activity, CCC will reimburse at a rate equal to the percentage of U.S. origin content of the promoted agricultural commodity or at a rate of 50 percent, whichever is the lesser, except that CCC may reimburse for a higher rate if:

(1) There has been an affirmative action by the U.S. Trade Representative under Section 301 of the Trade Act of 1974 with respect to the unfair trade practice cited and there has been no final resolution of the case; and

(2) The participant shows, in comparison to the year such Section 301 case was initiated, that U.S. market share of the agricultural commodity concerned has decreased; and

(3) In such case, CCC shall determine the appropriate rate of reimbursement.

(h) CCC will reimburse for expenditures made after the conclusion of participant's activity plan year provided:

(1) The activity was approved prior to the end of the activity plan year;

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

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

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 3548, Feb. 1, 1996; 61 FR 24206, May 14, 1996; 61 FR 32644, June 25, 1996; 63 FR 29940, June 2, 1998; 63 FR 32041, June 11, 1998]

§ 1485.17 Reimbursement procedures.

(a) A format for reimbursement claims is available from the Division Director. 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; and

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

(b) All claims for reimbursement shall be submitted by the participant's U.S. office to the Director, Marketing Operations Staff, FAS, USDA.

(c) In general, CCC will not reimburse a claim for less than $10,000 except that CCC will reimburse a final claim for a participant's activity plan year for a lesser amount.

(d) CCC will not reimburse claims submitted later than 6 months after the end of a participant's activity plan year.

(e) If CCC reimburses a claim with commodity certificates, CCC will issue commodity certificates with a face value equivalent to the amount of the claim which shall be in full accord and satisfaction of such claim.

(f) If CCC overpays a reimbursement claim, the participant shall repay CCC within 30 days the amount of the overpayment either by submitting a check payable to CCC or by offsetting its next reimbursement claim.

(g) If a participant receives a reimbursement or offsets an advanced payment which is later disallowed, the participant shall within 30 days of such disallowance repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim.

(h) The participant shall report any actions having a bearing on the propriety of any claims for reimbursement to the Attache/Counselor and its U.S. office shall report such actions in writing to the Division Director(s).

§ 1485.18 Advances.

(a) *Policy*. In general, CCC operates MAP and EIP/MAP on a reimbursable basis. CCC will not advance funds to an EIP/MAP participant or to an MAP participant for brand promotion activities.

(b) *Exception*. Upon request, CCC may advance payments to an MAP participant for generic promotion activities. Prior to making an advance, CCC may require the participant to submit security in a form and amount acceptable to CCC to protect CCC's financial interests. Total payments advanced shall not exceed 40 percent of a participant's approved annual generic activity budget. However, CCC will not make any advance to an MAP participant where an advance is outstanding from a prior activity plan year.

(c) *Refunds due CCC*. A participant shall expend the advance on approved generic promotion activities within 90 calendar days after the date of disbursement by CCC. A participant shall return any unexpended portion of the advance, plus a prorated share of all proceeds generated (i.e., premiums generated from certificate sales and interest earned), either by submitting a check payable to CCC or by offsetting its next reimbursement claim. All checks shall be mailed to the Director, Marketing Operations Staff, FAS, USDA.

§ 1485.19 Employment practices.

(a) An MAP participant shall enter into written contracts with all employees and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) An MAP participant shall, in its overseas office, conform its office hours, work week and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) An MAP participant may pay salaries or fees in any currency (U.S. or foreign) if approved by the Attache/Counselor. However, participants are cautioned to consult local laws regarding currency restrictions.

1485.20 Financial management, reports, evaluations and appeals.

(a) *Financial management*. (1) An MAP participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles.

(2) An MAP participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these provisions. Each participant shall maintain all original records and documents relating to program activities for five calendar years following the end of the applicable activity plan year and shall make such records and documents available upon request to authorized officials of the U.S. Government. An MAP participant shall also maintain all documents related to employment such as employment applications, contracts, position descriptions, leave records and salary changes, and all records pertaining to contractors.

(3) A 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:

(i) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(ii) Original receipts for any other program related expenditure in excess of $25.00;

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

(iv) Copies of reimbursement claims;

(v) An itemized list of claims charged to each of the participant's CCC resources accounts;

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

(vii) Documentation supporting contributions must include: the dates, purpose and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and, the method of computing the claimed contributions. MAP participants must retain and make available for audit documentation related to claimed contributions.

(4) Upon request, a participant shall provide to CCC originals of documents supporting reimbursement claims.

(b) *Reports*. (1) End-of-Year Contribution Report. Not later than 6 months after the end of its activity plan year, a participant shall submit two copies of a report which identifies, by activity and cost category and in U.S. dollar equivalent, contributions made by the participant, the U.S. industry and foreign third parties during that activity plan year. A suggested format of a contribution report is available from the Division Director.

(2) *Trip reports*. Not later than 45 days after completion of travel (other than local travel), an MAP participant shall 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 or specific accomplishments.

(3) *Research reports*. Not later than 6 months after the end of its activity plan year, an MAP participant shall submit a report on any research conducted in accordance with the activity plan.

(4) A participant shall submit the reports required by this subsection to the appropriate Division Director. Trip reports and research reports shall also be submitted to the Attache/Counselor concerned. All reports shall be in English and include the participant's agreement number, the countries covered, date of the report and the period covered in the report.

(5) CCC may require the submission of additional reports.

(6) A participant shall provide to the FAS Compliance Review Staff upon request any audit reports by independent public accountants.

(c) *Evaluation*—(1) *Policy*. (i) 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 MAP. Evaluation of MAP's effectiveness will depend on a clear statement by participants of goals to be met within a specified time, schedule of measurable milestones for gauging success, plan for achievement, and results of activities at regular intervals. The overall goal of the MAP and of individual participants' activities is to achieve additional exports of U.S. agricultural products, that is, sales that would not have occurred in the absence of MAP funding. A participant that can demonstrate additional sales compared to a representative base period, taking into account extenuating factors beyond the participant's control, will have met the overall objective of the GPRA and the need for evaluation.

(ii) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan and activity plan. The evaluation results guide the development and scope of a participant's program, contributing to program accountability and providing evidence of program effectiveness.

(iii) An MAP participant shall conduct periodic evaluations of its program and activities and may contract with an independent evaluator to satisfy this requirement. CCC reserves the right to have direct input and control over design, scope and methodology of

any such evaluation, including direct contact with and provision of guidance to the independent evaluator.

(2) *Types of evaluation.* (i) An activity evaluation is a review of an activity to determine whether such activity achieved the goals specified in the activity plan. Unless specifically exempted in the activity plan, all activity evaluations shall be completed within 90 days following the end of the MAP participant's activity plan year.

(ii) 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 activity plan. These evaluations shall be completed within 90 days following the end of the participant's activity plan year.

(iii) A program evaluation is a review of the MAP participant's entire program or any appropriate portion of the program to determine the effectiveness of the participant's strategy in meeting specified goals. An MAP participant shall complete at least one program evaluation each year. Actual scope and timing of the program evaluation shall be determined by the MAP participant and the Division Director and specified in the MAP participant's activity plan approval letter.

(3) *Contents of program evaluation.* A program evaluation shall contain:

(i) The name of the party conducting the evaluation;

(ii) The activities covered by the evaluation (including the activity numbers);

(iii) A concise statement of the constraint(s) and the goals specified in the activity plan;

(iv) A description of the evaluation methodology;

(v) A description of additional export sales achieved, including the ratio of additional export sales in relation to MAP funding received;

(vi) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(vii) Recommendations for future programs.

(4) An MAP participant shall submit via a cover letter to the Division Director, an executive summary which provides assessment of the program evaluation's findings and recommendations and proposed changes in program strategy or design as a result of the evaluation.

(5) If as a result of an evaluation or audit of activities of a participant under the program, CCC determines that further review is needed in order to ensure compliance with the requirements of the program, CCC may require the participant to contract for an independent audit of the program activities,

(d) *Appeals.* (1) The Director, Compliance Review Staff (Director, CRS) will notify a participant through a compliance report when it appears that CCC may be entitled to recover funds from that participant. The compliance report will state the basis for this action.

(2) A participant may, within 60 days of the date of the compliance report, submit a response to the Director, CRS. The Director, CRS, at the Director's discretion, may extend the period for response up to an additional 30 days. If the participant does not respond to the compliance report within the required time period or, if after review of the participant's response, the Director, CRS, determines that CCC may be entitled to recover funds from the participant, the Director, CRS, will refer the compliance report to the Deputy Administrator.

(3) If after review of the compliance report and response, the Deputy Administrator determines that the participant owes any money to CCC he will so inform the participant and provide the basis for the decision. The Deputy Administrator may initiate action to collect such amount pursuant to 7 C.F.R. Part 1403, Debt Settlement Policies and Procedures. Determinations of the Deputy Administrator will be in writing and in sufficient detail to inform the participant of the basis for the determination. The participant may request reconsideration within 30 days of the date of the Deputy Administrator's initial determination.

(4) The Participant may appeal determinations of the Deputy Administrator to the Administrator. An appeal must be in writing and be submitted to the office of the Deputy Administrator within 30 days following the date of the initial determination by the Deputy Administrator or the determination on

reconsideration. The participant may request a hearing.

(5) If the participant submits its appeal and requests a hearing, the Administrator, or the Administrator's designee, will set a date and time, generally within 60 days. 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 Administrator may have a transcript prepared at CCC's expense.

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

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

§ 1485.21 Failure to make required contribution.

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

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

§ 1485.22 Submissions.

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

§ 1485.23 Miscellaneous provisions.

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

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

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

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

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

(3) An MAP participant shall not limit participation to members of its organization. The MAP participant shall publicize its program and make

participation possible for commercial entities throughout the participant's industry or, in the case of SRTGs, throughout the corresponding region.

(4) A participant shall select U.S. agricultural industry representatives to participate in activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested, a participant shall submit such selection criteria to CCC for approval.

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

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

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

(2) A participant shall:

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

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

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

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

(v) Perform some form of price or cost analysis such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices.

(d) *Disposable capital goods.* (1) Capital goods purchased by the MAP participant and reimbursed by CCC that are unusable, unserviceable, or no longer needed for project purposes shall be disposed of in one of the following ways:

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

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

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

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

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

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

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

(2) Make no allowance for extension or renewal;

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

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

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

(6) Require that all product labels, promotional material and advertising will identify the origin of the agricultural commodity as ''Product of the U.S.'', ''Product of the U.S.A.'', ''Grown in the U.S.'', ''Grown in the U.S.A.'', ''Made in America'' or other U.S. regional designation if approved in advance by CCC; that such origin identification will be conspicuously displayed, in a manner that is easily observed; and that such origin identification will conform, to the extent possible, to the U.S. standard of 1/6″ (.42 centimeters) in height based on the lower case letter ''o''. A participant may request an exemption from this requirement. All such requests shall be in writing and include justification satisfactory to the Deputy Administrator that this labelling requirement would hinder a participant's promotional efforts. The Deputy Administrator will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labelling requirement;

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

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

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

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

(g) Travel shall conform to U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and air travel shall conform to the requirements of the ''Fly America Act (49 U.S.C. 1517).'' The MAP participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel.

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

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

§ 1485.24 Applicability date.

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

§ 1485.25 Paperwork reduction requirements.

The paperwork and record keeping requirements imposed by this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. OMB has assigned control number 05510027 for this information collection.

PART 1487 [RESERVED]

PART 1488—FINANCING OF SALES OF AGRICULTURAL COMMODITIES

Subpart A—Financing of Export Sales of Agricultural Commodities from Private Stocks Under CCC Export Credit Sales Program (GSM–5)

GENERAL

Sec.
1488.1 General statement.
1488.2 Definition of terms.

FINANCING EXPORT SALES

1488.3 General.
1488.4 Submission of requests for sale registrations.
1488.5 Acceptance of sale registrations.
1488.6 Amendments to financing agreement.
1488.7 Expiration of period(s) for delivery and/or export.

DOCUMENTS REQUIRED FOR FINANCING

1488.8 Documents required after delivery.
1488.9 Evidence of export.
1488.9a Evidence of export for commodities delivered before export.

DOCUMENTS REQUIRED AFTER FINANCING

1488.10 Evidence of entry into country of destination.

DELIVERY REQUIREMENTS

1488.11 Liquidated damages.

BANK OBLIGATIONS AND REPAYMENT

1488.12 Coverage of bank obligations.
1488.13 CCC drafts.
1488.14 Interest charges.
1488.15 Advance payment.
1488.16 Liability for payment.

MISCELLANEOUS PROVISIONS

1488.17 Assignment.
1488.18 Covenant against contingent fees.
1488.19 [Reserved]
1488.20 Officials not to benefit.
1488.21 Exporter's records and accounts.
1488.22 Communications.
1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c) and sec. 4(a), 80 Stat. 1538, as amended by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(a)).

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM–5)

SOURCE: 42 FR 10999, Feb. 25, 1977, unless otherwise noted.

GENERAL

§ 1488.1 General statement.

(a) Except as otherwise provided in this paragraph (a), the regulations and the supplements thereto contained in this subpart A supersede the regulations and supplements revised April 1975, and set forth the terms and conditions governing the CCC Export Credit Sales Program (GSM–5). The maximum financing period shall be three years. The regulations and supplements as revised in April 1971 and April 1975, shall remain in effect for all transactions under financing approvals issued thereunder.

(b) Subject to the terms and conditions set forth in this subpart A, CCC will purchase for cash, after delivery, the exporter's account receivable arising from the export sale.

(c) The provisions of Pub. L. 83–664 are not applicable to shipments under this program.

(d) The regulations contained in this subpart A may be supplemented by such additional terms and conditions, applicable to specified agricultural commodities, and, to the extent that they may be in conflict or inconsistent with any other provisions of this subpart A, such additional terms and conditions shall prevail.

§ 1488.2 Definition of terms.

As used in this subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) *Account receivable* means the contractual obligation of the foreign importer to the exporter for the port value of the commodity delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the U.S. exporter and the foreign importer. The account receivable shall provide for (1) payment of principal and interest in U.S. dollars in the United States, (2) interest in accordance with § 1488.14, and (3) acceleration of payment thereunder in accordance with these regulations.

(b) *Agency or branch bank* means an agency or branch of a foreign bank, supervised by New York State banking authorities or the banking authorities of any other State providing similar supervision, and approved by the Controller, CCC.

(c) *Assistant Sales Manager* means the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager.

(d) *Bank obligation* means an obligation, acceptable to CCC, of a U.S. bank, a foreign bank, an agency or branch bank, to pay to CCC in U.S. dollars the amount of the account receivable, plus interest in accordance with § 1488.14. The bank obligation shall be in the form of an irrevocable letter of credit issued by a U.S. bank or a branch bank, or confirmed or advised by a U.S. bank or any agency or branch bank in accordance with § 1488.12. The bank obligation shall provide for payment under the terms and conditions of the financing agreement and shall be payable not later than the date of expiration of the financing period or of the bank obligation, whichever occurs first, if payment is not received from other sources.

(e) *CCC* means the Commodity Credit Corporation, U.S. Department of Agriculture.

(f) *Carrying charges* means storage, insurance, and interest charges involved in the cost of storing the commodity before delivery as provided for in the sales contract, and other incidental costs as may be approved by the Assistant Sales Manager.

(g) *Commercial risk* means risk of loss due to any cause other than specified as noncommercial risk in paragraph (u) of this section.

(h) *Date of delivery* means the onboard date of the ocean bill of lading, or the date of an airway bill, or, if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country. If delivery is before export, the date of delivery means (1) the date(s) of the warehouse receipt(s), or other evidence acceptable to CCC, covering the commodity in a warehouse acceptable to CCC, or (2) the onboard carrier (truck, rail car or lash or seabee barge) date of a through bill of lading covering commodities in a container or a lash or seabee barge at a U.S. inland or coastal point.

(i) *Date of sale* means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or a mechanism to establish the price has been agreed upon.

(j) *Delivery* means the delivery required by the export sale contract to transfer to the importer full or conditional title to the agricultural commodity. Delivery before export may be (1) in a warehouse in the United States acceptable to CCC by issuance or transfer of the warehouse receipt to the importer, or (2) f.a.s. or f.o.b. U.S. inland or coastal loading point, if the commodity is loaded in a container on a truck or rail car, or in a lash or seabee barge for shipment to a point of export under a through bill of lading. Delivery at point of export shall be f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. airports, at U.S. border points of exit or, if transshipped through Canada, at ports on the Great Lakes or the St. Lawrence River.

(k) *Eligible commodities* means agricultural commodities, including eligible cotton, produced in the United States and designated as eligible for export

under CCC's Export Credit Sales Program in a USDA announcement. Commodities which have been purchased from CCC are eligible for export as private stocks. Exports of commodities pursuant to any CCC barter contract, Pub. L. 480 or AID agreement, or direct loan by the Export-Import Bank are not eligible for financing under this program. Commodities delivered prior to CCC receiving the sale registration request in accordance with §1488.4 are not eligible for financing under this program unless such financing is determined by the Vice President, CCC, or the Assistant Sales Manager, to be in the interest of CCC.

(l) *Eligible cotton* means Upland and Extra Long staple cotton grown in the United States: *Provided, however,* That reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, motes, and linters, and any cotton that contains any by-products of cotton are not eligible for export financing hereunder. CCC's determination as to the eligibility of cotton shall be final.

(m) *Eligible destination* means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(n) *Eligible exporter* or *exporter* means a person (1) who is engaged in the business of buying or selling commodities and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting with or participating in any program financed by CCC on the date of issuance of the financing approval.

(o) *OGSM* means the Office of the General Sales Manager, U.S. Department of Agriculture.

(p) *Financing agreement* means the exporter's request for a sale registration as approved by the Assistant Sales Manager, including the terms and conditions of the regulations in effect on the date of approval.

(q) *Financing period* means the number of months over which repayment is to be made. Such period shall start on the date of delivery or the weighted average delivery date of the commodities to be exported under the financing agreement, and shall expire on the expiration of the bank obligation or the specified period over which repayment is to be made, whichever occurs first.

(r) *Foreign bank* means a bank which is not a U.S. bank or an agency or branch bank, and includes a foreign branch of a U.S. bank.

(s) *Foreign importer* or *importer* means the foreign buyer who purchases the commodities to be exported under a financing agreement and executes the documents evidencing the account receivable assigned to CCC.

(t) *GSM–5* means the regulations contained in this subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Export Credit Sales Program.

(u) *Noncommercial risk* means risk of loss due to (1) inability of the foreign bank through no fault of its own to convert foreign currency to dollars, or (2) non-delivery into the eligible destination of the commodity covered by a financing agreement through no fault of the foreign bank or importer or exporter because of the cancellation by the government of the eligible destination of previously issued valid authority to import such shipment into the eligible destination or because of the imposition of any law or of any order, decree, or regulation having the force of law, which prevents the import of such shipment into the eligible destination, or (3) inability of the foreign bank to make payment due to war, hostilities, civil war, rebellion, revolution, insurrection, civil commotion, or other like disturbance occurring in the eligible destination, expropriation, or confiscation, or other like action by the government of the eligible destination country, or (4) failure of the foreign bank to make payment for any reason if it is an instrumentality of or is wholly owned by the foreign government.

(v) *Port value* means the net amount of the exporter's sales price of the commodity to be exported under the financing agreement, (1) basis f.a.s. or

f.o.b. export carrier at U.S. ports, at U.S. border points of exit, at U.S. airports if shipped by air, or, if transshipped through Canada at ports on the Great Lakes, or on the St. Lawrence River, or (2) basis U.S. warehouse for commodities delivered to such warehouse before export, or (3) basis f.a.s. or f.o.b. U.S. inland or coastal loading point for commodities delivered before export under through bill of lading. The port value shall not include ocean freight for a c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale but may include carrying charges as provided for in the sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodities, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(w) *Sale* means a contract to sell on credit U.S. agricultural commodities to be financed under GSM–5.

(x) *United States* means the 50 States, the District of Columbia, and Puerto Rico.

(y) *U.S. bank* means a bank organized under the laws of the United States, a State, or the District of Columbia.

(z) *USDA announcement* means an announcement published monthly by the U.S. Department of Agriculture (USDA), and which includes the list of eligible commodities and interest rates under GSM–5.

(aa) *Vice President, CCC* means the Vice President who is the General Sales Manager, Office of the General Sales Manager.

[42 FR 10999. Feb. 25, 1977, as amended at 42 FR 30833, June 17, 1977; Amdt. 5, 43 FR 25992, June 16, 1978]

FINANCING EXPORT SALES

§ 1488.3 General.

When considering the extension of CCC credit for the purpose of financing agricultural commodities, CCC will take into account the extent to which CCC credit financing will:

(a) Permit U.S. exporters to meet competition from other countries.

(b) Prevent a decline in U.S. commercial export sales.

(c) Substitute commercial dollar sales for sales made pursuant to Pub. L. 480 or other concessional programs.

(d) Result in a new use of the agricultural commodity in the importing country.

(e) Permit expanded consumption of agricultural commodities in the importing country and thereby increase total commercial sales of agricultural commodities to the importing country.

§ 1488.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in § 1488.22.

(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.

(c) The total amount requested to be registered under a sale shall not exceed the sale contract value, including the upward tolerance, if any.

(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM–5. The following information shall also be included in the exporter's request for a sale registration:

(1) The name, class, grade, or quality, as applicable, and quantity of the commodity to be exported.

(2) The country of destination.

(3) The port value of the commodity to be exported and the sale contract tolerance, if applicable.

(4) The date of sale and exporter's sale number.

(5) The date of delivery or the period for delivery and the month in which application for payment will be submitted.

(6) The financing period.

(7) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address, and the name of the confirming U.S. bank, branch bank, or agency bank (if approved as provided in § 1488.12b), and the percentage of confirmation.

(8) The name and address of the foreign importer.

(9) If delivery of the commodity to be exported is before export in a warehouse, the name and address of the warehouse to which delivery is to be made.

(10) If the commodity will be sold through an intervening purchaser, the name and address of the intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser and that the commodity will be shipped directly to the foreign importer in the destination country specified in paragraph (d)(2) of this section pursuant to a contract in which the foreign importer agrees to pay the U.S. exporter the amount to be financed in accordance with the terms of GSM–5 financing agreement.

(11) Any additional information as determined by CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 5, 43 FR 25992, June 16, 1978]

§ 1488.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this subpart, the Assistant Sales Manager may approve the registration of the sale. If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) [Reserved]

(c) CCC reserves the right to reject any and all requests for sale registration.

(d) The registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter's request for a sale registration, CCC's acceptance of the sale registration, the applicable terms and conditions of this subpart, including amendments and supplemental announcements hereunder which are in effect on the date of approval.

(e) The financing agreement may contain such terms and conditions, not inconsistent with GSM–5, as are deemed necessary in the interest of CCC.

(f) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 6, 43 FR 29933, July 12, 1978]

§ 1488.6 Amendments to financing agreement.

The financing agreement may be amended provided such amendment is in conformity with GSM–5 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery or the period for export, and change in the interest rate. After the commodity has been delivered, CCC will consider requests to increase the amount of the sale registration value for any quantity within the tolerance in the sales contract and for carrying charges provided such requests relate to the same sale as originally registered with CCC.

§ 1488.7 Expiration of period(s) for delivery and/or export.

(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by CCC by the period of such delay.

(c) If delivery is made before export under the terms of the financing agreement, failure to export within the period specified therefor in the financing agreement shall constitute a breach of the financing agreement. In such case, if full payment under the bank obligation or account receivable has not been received, the account receivable and the bank obligation shall, at the option of the Assistant Sales Manager, become immediately due and payable, and liquidated damages shall be payable in accordance with § 1488.11.

DOCUMENTS REQUIRED FOR FINANCING

§ 1488.8 Documents required after delivery.

(a) CCC will purchase an exporter's account receivable only if the Treasurer, Commodity Credit Corporation, United States Department of Agriculture, Washington, DC 20250, receives the documents specified in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations within forty-five days, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, after date of delivery of commodities exported or to be exported under the financing agreement.

(b) The exporter shall submit a ''Combined Application for Disbursement, Assignment of Account Receivable and Certification'' which shall include:

(1) A written application for disbursement, showing the financing agreement number and the port value of the commodity delivered.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter's certification (i) that he has entered into a contract to sell an eligible commodity; (ii) of the date of sale, the grade, quality, quantity, agreed upon price for the commodity and payment terms and interest in accordance with the financing agreement; (iii) that he has in his files documents evidencing the export sale contract and the obligation of the importer to him for the financed portion of the export sale and will retain and furnish them to CCC on demand until 3 years after the end of the financing period; (iv) that agricultural commodities of the grade, quality, and quantity called for in the exporter's sale as registered with CCC have been delivered to the foreign importer; and (v) that he knows of no defenses to the account receivable assigned to CCC.

(c) A copy of the sales invoice to the foreign importer, or, if the commodity has been sold through an intervening purchaser, a copy of the exporter's sales invoice to the intervening purchaser and of the intervening purchaser's sales invoice to the foreign importer.

(d) A copy of the document evidencing export provided for in § 1488.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer. If delivery is before export in a warehouse acceptable to CCC, the warehouse receipt or other documents acceptable to CCC evidencing delivery of the commodity to the importer or his agent. If delivery is before export in a container or a lash or seabee barge at a U.S. inland or coastal point, for export shipment under a through bill of lading, one copy of the through bill of lading with an onboard (truck, rail car, or lash or seabee barge) endorsement, dated and signed or initialed on behalf of the export carrier. The through bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date, and place of loading the commodity on a truck, or rail car, or lash or seabee barge, the name of the originating carrier, the destination of the commodity, and the name of both the exporter and the importer.

(e) A bank obligation or obligations in accordance with § 1488.7(c), § 1488.10, § 1488.12 and paragraph (i) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number; and providing for the payment of interest in accordance with § 1488.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations, the Treasurer, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of sales registered in accordance with § 1488.5, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days

from the date of the delivery, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) [Reserved]

(i) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership, or in liquidation, or has made an assignment for the benefit of creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if confirmed in accordance with § 1488.12.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; Amdt. 5, 43 FR 25992, June 16, 1978]

§ 1488.9 Evidence of export.

(a) If the commodity is exported by rail or truck, the exporter shall furnish to the Treasurer, CCC, one copy of the bill of lading covering the commodity exported, certified by the exporter as being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the commodity is exported, showing the quantity, the gross landed weight of the commodity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the commodity is exported by ocean carrier, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy or photo copy or other type of copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading the commodity, the name of the vessel, the destination of the commodity and the name and address of both the exporter and the importer.

(c) If the commodity is exported by aircraft, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the date and place of loading the commodity, the name of the airline, the destination of the commodity, and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

(e) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

§ 1488.9a Evidence of export for commodities delivered before export.

For commodities delivered before export under a financing agreement for which the financial period is 12 months or less, the exporter shall furnish a certification to the Treasurer, CCC, within 60 days from the date of delivery or such extension of time as may be granted by the Treasurer or Assistant Treasurer, CCC, certifying that the commodities have been exported. The certification must include the name of the ocean carrier, the date the commodities were loaded aboard the ocean carrier and the financing agreement number.

[Amdt. 5, 43 FR 25992, June 16, 1978]

DOCUMENTS REQUIRED AFTER FINANCING

§ 1488.10 Evidence of entry into country of destination.

(a) Commodities exported under a financing agreement must enter the destination country specified in the financing agreement.

(b) For a financing agreement under which the financing period is in excess of 12 months, within 90 days, or such extension of time as may be granted in writing by the Assistant Sales Manager, following shipment from the United States of any agricultural commodity exported under the financing

agreement, the exporter shall furnish to the office specified in § 1488.22, documentary evidence verifying entry of the commodity into the country of destination specified in the financing agreement. The documentary evidence must:

(1) Identify the agricultural commodity (or permit identification through supplementary documents also furnished) as that exported under the financing agreement,

(2) State the quantity and date of entry of the commodity into the destination country, and

(3) Be signed by (i) a customs official of the destination country, or (ii) the importer, or (iii) a representative of an independent superintending or controlling firm.

(c) When the commodity enters the country of destination in bond, a statement by the importer will be acceptable which:

(1) Identifies the commodity as that exported under the financing agreement,

(2) States the quantity of the commodity entered under bond and date of entry into the destination country, and

(3) Certifies that the commodity will be withdrawn from bonded storage at a later date for consumption in the destination country.

(d) If the evidence of entry is in other than the English language, the exporter shall also provide an English translation thereof.

(e) Failure to furnish, within the time specified, evidence of entry of the commodity into the country of destination shall constitute prima facie evidence of failure to enter or to cause the entry of the commodity into such country as required. In such case, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with § 1488.11. The remedy herein provided shall not be exclusive of other rights available to the Federal government if the commodity enters a country other than that specified in the financing agreement.

DELIVERY REQUIREMENTS

§ 1488.11 Liquidated damages.

Failure of the exporter to export or cause to be exported, within the period provided therefor, any agricultural commodity financed, when delivery is made before export under the terms of the financing agreement, or failure of the exporter to enter or cause the entry of, such commodity into the country of destination, shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages, as follows:

(a) For each day of delay in exportation after the final date for exportation, when delivery is made before export under the terms of the financing agreement, .15 percent of the amount financed under the financing agreement for the commodity not exported; (b) for failure to export or cause exportation, when delivery is made before export under the terms of the financing agreement, 5 percent of the amount financed under the financing agreement for the commodity not exported; (c) for failure, after exportation, to enter or cause the entry of the commodity into the country of destination, at the rate of 5 percent a year of the amount financed under the financing agreement for such commodity from the start of the financing period until payment to CCC of the amount financed; *Provided however*, That the aggregate of all amounts assessed under this § 1488.11 with respect to the same commodity shall not exceed 5 percent of the amount financed for such commodity. Liquidated damages shall not be assessed: Under paragraph (a) of this section if the Assistant Sales manager determines that the delay was due to such causes as acts of God or government or public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; under paragraph (b) of this section if the Assistant Sales

Manager determines that failure to export was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy; and under paragraph (c) of this section if the Assistant Sales Manager determines that failure to enter or cause the entry of the commodity into the country of destination was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy.

BANK OBLIGATIONS AND REPAYMENT

§ 1488.12 Coverage of bank obligations.

(a) U.S. banks and branch banks shall be liable without regard to risk (1) for payment of bank obligations issued by them or (2) for payment of bank obligations confirmed by them without regard to risk if a requirement for such confirmation is included in the financing agreement or (3) as provided in paragraphs (c) and (d) of this section.

(b) An obligation issued by a foreign bank must be confirmed and advised, as provided in paragraphs (a), (c), (d), (e), and (f) of this section, by a U.S. bank or a branch bank, or may be confirmed by an agency bank when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC.

(c) A U.S. bank must confirm the full amount of an obligation issued by its foreign branch. CCC will hold the U.S. bank liable for payment without regard to risks.

(d) If a branch bank confirms an obligation issued by its home office, or by another branch of its home office, it must confirm the full amount thereof. CCC will hold the branch bank liable for payment without regard to risks.

(e) If CCC accepts an agency bank confirmation of a foreign bank obligation, it must be for the full amount thereof without regard to risks and will be subject to such terms and conditions as may be contained in the financing agreement. CCC will not accept an agency bank confirmation of an obligation issued by its home office, or by a branch of its home office.

(f) Except as provided in paragraphs (a), (c), and (d) of this section, if a U.S. bank or a branch bank confirms an obligation issued by a foreign bank, it must confirm at least 10 percent pro rata and must advise the remainder of the foreign bank obligation. The percentage of confirmation shall be the same for both the account receivable and the interest portions of the obligation. For the confirmed amount, except as provided in paragraph (a)(2) of this section, CCC will hold the U.S. bank or branch bank liable for commercial risks but not for non-commercial risks. For the advised amount, CCC will not hold the U.S. bank or branch bank liable for commercial or non–commercial risks. CCC will hold the foreign bank liable without regard to risks for all amounts not recovered from the U.S. or branch bank.

(g) Under special circumstances, on application in writing, the Vice President, CCC, may reduce or waive requirements for 10 percent confirmation by a U.S. or branch bank, but a bank will not be relieved of any obligation it undertakes.

(h) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker's acceptance) shall not be acceptable to CCC.

(i) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives from other sources or amounts otherwise payable under such bank obligation.

(j) Collection of accounts receivable purchased under GSM–5 will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; 42 FR 30833, June 17, 1977; 43 FR 45551, Oct. 3, 1978; 44 FR 51187, Aug. 31, 1979]

§ 1488.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If any portion of a CCC draft is dishonored, the U.S. bank or branch bank shall return the dishonored draft together with its statement of the reason for nonpayment. If a draft which is drawn under a partially confirmed bank obligation is dishonored, CCC will replace the draft with separate drafts

for the confirmed and unconfirmed portions at the request of the confirming bank. Such replacement shall not alter the confirming bank's obligation for timely payment to CCC of the confirmed portion of the credit. For confirmed amounts, except as provided in § 1488.12(a), (c) and (d), a U.S. or branch bank may request refund from CCC of the amount paid if it certifies to CCC that it is unable to recover funds from the foreign bank due to a stipulated non-commercial risk which existed on the date payment was made to CCC under the draft. If CCC finds that inability to recover funds was due to such a non-commercial risk, the refund shall be promptly made together with interest at the Federal Reserve Bank of New York discount rate from and including the date payment was originally made to CCC but not include the date of refund by CCC. For unconfirmed amounts, remittance to CCC shall be considered final, and the U.S. bank or branch bank shall not thereafter have recourse to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 21, 1977; 42 FR 30833, June 17, 1977]

§ 1488.14 Interest charges.

The account receivable assigned to CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be published in USDA announcement. The interest rate applicable to that portion of an account receivable for which payment is assured by a bank obligation issued or confirmed for all risks according to § 1488.12(a)(ii) or pro rata confirmed by a U.S. bank shall be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable to that portion of an account receivable the payment of which is assured by a bank obligation issued or pro rata confirmed by a branch bank shall, when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rates applicable to accounts receivable the payment of which is assured by an agency bank confirmation may, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under § 1488.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the agricultural commodities delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977]

§ 1488.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

§ 1488.16 Liability for payment.

If delivery is made within the coverage of the bank obligation(s) submitted in accordance with § 1488.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter or intervening purchaser, for payment of all amounts due at maturity of the account receivable and of the bank obligation(s), but the exporter and the intervening purchaser shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by them pursuant to the financing agreement, and the exporter shall remain liable for any amounts not covered by the bank obligation which are owing to CCC, and any remittance or

refund required by § 1488.15 and § 1488.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in § 1488.11. The liability of the bank and the importer under their respective obligations shall be several.

MISCELLANEOUS PROVISIONS

§ 1488.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

§ 1488.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to annul the financing agreement without liability to CCC. Should the financing agreement be annulled, CCC will promptly consent to the reduction or cancellation or related bank obligations except for amounts outstanding under a financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

§ 1488.19 [Reserved]

§ 1488.20 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made 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]

PARTS 1491–1492 [RESERVED]

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

Sec.
1493.1 General statement.
1493.2 Purposes of programs.
1493.3 Restrictions on programs and cargo preference statement.
1493.4 Criteria for country allocations.
1493.5 Criteria for agricultural commodity allocations.
1493.6 Additional required determinations for GSM–103.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

1493.10 General statement.

1493.20 Definition of terms.
1493.30 Information required for program participation.
1493.40 Application for a payment guarantee.
1493.50 Certification requirements for obtaining payment guarantee.
1493.60 Payment guarantee.
1493.70 Guarantee rates and fees.
1493.80 Evidence of export.
1493.90 Certification requirements for the evidence of export.
1493.100 Proof of entry.
1493.110 Notice of default and claims for loss.
1493.120 Payment for loss.
1493.130 Recovery of losses.
1493.140 Miscellaneous provisions.

Subpart C—CCC Facility Guarantee Program (FGP) Operations

1493.200 General statement.
1493.210 Definition of terms.
1493.220 Exporter eligibility.
1493.230 Eligible transactions.
1493.240 Initial application and letter of preliminary commitment.
1493.250 Final application and issuance of a facility payment guarantee
1493.260 Facility payment guarantee.
1493.270 Certifications.
1493.280 Evidence of export report.
1493.290 Proof of entry.
1493.300 Notice of default and claims for loss.
1493.310 Payment for loss.
1493.320 Recovery of losses.
1493.330 Miscellaneous provisions.

Subpart D—CCC Supplier Credit Guarantee Program Operations

1493.400 General statement.
1493.410 Definition of terms.
1493.420 Information required for program participation.
1493.430 Application for a payment guarantee.
1493.440 Certification requirements for payment guarantee.
1493.450 Payment guarantee.
1493.460 Guarantee rates and fees.
1493.470 Evidence of export.
1493.480 Certification requirements for the evidence of export.
1493.490 Proof of entry.
1493.500 Notice of default and claims for loss.
1493.510 Payment for loss.
1493.520 Recovery of losses.
1493.530 Miscellaneous provisions.

AUTHORITY: 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f).

SOURCE: 59 FR 52876, Oct. 19, 1994, unless otherwise noted.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

§ 1493.1 General statement.

This subpart sets forth the restrictions which apply to the use of credit guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103) and the criteria considered by CCC in determining the annual allocations of credit guarantees to be made available with respect to each participating country. This subpart also sets forth the criteria considered by CCC in the review and approval of proposed allocation levels for GSM–102 and/or GSM–103 credit guarantees which may be made available in connection with export sales of specific U.S. agricultural commodities to these countries. These restrictions and criteria are interrelated and will be applied and considered together in the process of determining which sales opportunities under GSM–102 or GSM–103 will best meet the purposes of the programs.

§ 1493.2 Purposes of programs.

CCC may use export credit guarantees:

(a) To increase exports of U.S. agricultural commodities;

(b) To compete against foreign agricultural exports;

(c) To assist countries, particularly developing countries, in meeting their food and fiber needs; and

(d) For such other purposes as the Secretary of Agriculture determines appropriate, consistent with the provisions of § 1493.6.

§ 1493.3 Restrictions on programs and cargo preference statement.

(a) *Restrictions on use of credit guarantees.* (1) Export credit guarantees authorized under these regulations shall not be used for foreign aid, foreign policy, or debt rescheduling purposes.

(2) CCC shall not make credit guarantees available in connection with sales of agricultural commodities to any country that the Secretary determines cannot adequately service the debt associated with such sales.

(b) *Cargo preference laws*. The provisions of the cargo preference laws shall not apply to export sales with respect to which credit is guaranteed under these programs.

§ 1493.4 Criteria for country allocations.

The criteria considered by CCC in reviewing proposals for country allocations under the GSM–102 or GSM–103 programs, will include, but not be limited to, the following:

(a) Potential benefits that the extension of export credit guarantees would provide for the development, expansion or maintenance of the market for particular U.S. agricultural commodities in the importing country;

(b) Financial and economic ability of the importing country to adequately service CCC guaranteed debt;

(c) Financial status of participating banks in the importing country as it would affect their ability to adequately service CCC guaranteed debt;

(d) Political stability of the importing country as it would affect its ability to adequately service CCC guaranteed debt; and

(e) Current status of debt either owed by the importing country to CCC or to lenders protected by CCC's guarantees.

§ 1493.5 Criteria for agricultural commodity allocations.

The criteria considered by CCC in reviewing proposals for specific U.S. commodity allocations within a specific country allocation will include, but not be limited to, the following:

(a) Potential benefits that the extension of export credit guarantees would provide for the development, expansion or maintenance of the market in the importing country for the particular U.S. agricultural commodity under consideration;

(b) The best use to be made of the export credit guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country;

(c) Evaluation, in terms of program purposes, of the relative benefits of providing payment guarantee coverage for sales of the U.S. agricultural commodity under consideration compared to providing coverage for sales of other U.S. agricultural commodities; and

(d) Evaluation of the near and long term potential for sales on a cash basis of the U.S. commodity under consideration.

§ 1493.6 Additional required determinations for GSM–103.

Notwithstanding any other provision under this part, CCC shall not guarantee under the GSM–103 program the repayment of credit made available to finance an export sale unless the Secretary of Agriculture determines that such sale will:

(a) Develop, expand or maintain the importing country as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities, without displacing normal commercial sales;

(b) Improve the capability of the importing country to purchase or use, on a long-term basis, U.S. agricultural commodities; or

(c) Otherwise promote the export of U.S. agricultural commodities.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

§ 1493.10 General statement.

(a) *Overview*. (1) This subpart contains the regulations governing the operations of the Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103). The GSM–102 and GSM–103 programs of the Commodity Credit Corporation (CCC) were developed to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. Under GSM–102, credit guarantees are issued for terms of up to three years. Under GSM–103, credit guarantees are issued for terms of from three to ten years.

(2) The programs operate in cases where credit is necessary to increase or

maintain U.S. exports to a foreign market and where private U.S. financial institutions would be unwilling to provide financing without CCC's guarantee. The programs are operated in a manner intended not to interfere with markets for cash sales. The programs are targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by these programs is the CCC payment guarantee. The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and interest due from, but not paid by, the foreign bank issuing an irrevocable letter of credit in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than governmental, financing and incurs a substantial portion of the risk of default by the foreign bank. CCC assumes this risk, in order to be able to operate the programs for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* Typically, in export sales of U.S. agricultural commodities, payment by the importer is made under an irrevocable letter of credit. For the purpose of the GSM–102 and GSM–103 programs, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made in one of the two following ways:

(1) An irrevocable foreign bank letter of credit, issued in favor of the exporter, specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as such payments become due; or

(2) An irrevocable foreign bank letter of credit, issued in favor of the exporter, that is supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obligated to make payment to the exporter, or the exporter's assignee, in U.S. dollars as such payments become due. The exporter may assign the right to proceeds under the letter of credit or related obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the irrevocable foreign bank letter of credit or its related obligation. The GSM–102 and GSM–103 programs are designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the foreign bank obligated under the letter of credit or related obligation.

(c) *Program administration.* The GSM–102 and GSM–103 programs will be administered pursuant to this part and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this part. These programs are under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.20(c), ''Contacts P/R'').

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a GSM–102 and/or GSM–103 program allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products thereof. Exporters may negotiate export sales to buyers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the

dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified ''undesignated'' or ''unallocated'' dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the ''unallocated'' or ''undesignated'' portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an ''allocated'' or ''undesignated'' dollar amount will contain further information on the ''unallocated'' or ''undesignated'' portion of the country allocation.

§ 1493.20 Definition of terms.

Terms set forth in this part, in CCC Program Announcements and Notices to Participants, and in any CCC-originated documents pertaining to the GSM–102 and GSM–103 programs will have the following meanings:

(a) *Assignee*. A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC*. The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 *et seq.*), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R*. A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the GSM–102 or GSM–103 program. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) *Date of export*. One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) *Date of sale*. The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and allowances*. Any consideration provided directly or indirectly, by or on behalf of the exporter or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(g) *Eligible interest*. The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-

week bill auction in effect at that time.

(h) *Exported value*. (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) *Exporter*. A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of § 1493.30.

(j) *FAS/USDA*. The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *Foreign bank letter of credit*. An irrevocable commercial letter of credit, subject to the current revision of the Uniform Customs and Practices for Documentary Credits (International Chamber of Commerce Publication No. 500, or latest revision), providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(l) *GSM*. The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(m) *GSM–102*. A CCC program, also referred to as the ''Export Credit Guarantee Program,'' under which payment guarantees are approved for a credit period not exceeding 3 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(n) *GSM–103*. A CCC program, also referred to as the ''Intermediate Export Credit Guarantee Program,'' under which payment guarantees are approved for a credit period no less than 3 years but not exceeding 10 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(o) *Guaranteed value*. The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(p) *Importer*. A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(q) *Incoterms*. The following customary terms, as defined by the International Chamber of Commerce, Incoterms (current revision):

(1) Free Alongside Ship (FAS),

(2) Free on Board (FOB),

(3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF), and

(4) Cost Insurance and Freight (CIF).

(r) *Intervening purchaser*. A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(s) *Late interest*. Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order

and ending on the day on which payment is made on such claim for loss.

(t) *Payment guarantee.* An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee, this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by a foreign bank on its payment obligation under the foreign bank letter of credit issued in connection with a guaranteed sale or under the foreign bank's related obligation.

(u) *Notice to participants.* A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

(v) *Port value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(w) *Program announcement.* An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, and include other information and requirements.

(x) *Related obligation.* A contractual commitment by the foreign bank issuing the letter of credit in connection with an export sale to make payment(s) on principal amount(s), plus any contractual interest, in U.S. dollars, to a financial institution in the United States on deferred payment terms consistent with those permitted under CCC's credit guarantee programs. The U.S. financial institution is entitled to such payments because it has financed the obligation arising under such letter of credit.

(y) *United States or U.S.* All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(z) *U.S. agricultural commodity.* (1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

(aa) *USDA*. United States Department of Agriculture.

[59 FR 52876, Oct. 19, 1994, as amended at 62 FR 24561, May 6, 1997]

§ 1493.30 Information required for program participation.

Before CCC will accept an application for a payment guarantee under either the GSM–102 program or the GSM–103 program, the applicant must qualify for participation in these programs. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the programs.

(a) *Submission of documentation*. In order to qualify for participation in the GSM–102 and GSM–103 programs, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular GSM–102 or GSM–103 export sale contemplated by the applicant;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: ''I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. [''Principals,'' for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC.''

(b) *Previous qualification*. Any exporter that has previously qualified under this section may submit applications for GSM–102 or GSM–103 payment guarantees. Each application must include the statement required by § 1493.40(a)(18) incorporating the certifications of § 1493.50, including the certification in § 1493.50(e) that the information previously provided pursuant to paragraph (a) of this section has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional submissions*. CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by CCC.

(d) *Ineligibility for program participation*. An applicant may be ineligible to participate in the GSM–102 or GSM–103 programs if:

(1) Such applicant is currently debarred, suspended, or proposed for debarment from contracting with or

participating in any program administered by a U.S. Government agency; or

(2) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency.

§ 1493.40 Application for payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country.

(2) Name and address of the importer.

(3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country.

(4) Date of sale.

(5) Exporter's sale number.

(6) Delivery period as agreed between the exporter and the importer.

(7) A full description of the commodity (including packaging, if any).

(8) Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance.

(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified.

(10) Description and value of discounts and allowances, if any.

(11) Port value (includes upward loading tolerance, if any).

(12) Guaranteed value.

(13) Guarantee fee.

(14) Name and location of the foreign bank issuing the letter of credit.

(15) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale.

(16) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA under one of these programs should be included, as applicable.

(17) Other information as specified in Notices to Participants, as applicable.

(18) The exporter's statement, ''All Section 1493.50 Certifications Are Being Made In This Application'' which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.50.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.60(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

§ 1493.50 Certification requirements for obtaining payment guarantee.

By providing the statement in § 1493.40(a)(18), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application

for a payment guarantee and providing the statement set forth in §1493.40(a)(18), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by §1493.20(z).

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to §1493.30 has not changed, the exporter still meets all of the qualification requirements of §1493.30, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a GSM–102 or GSM–103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

[59 FR 52876, Oct. 19, 1994, as amended at 62 FR 24561, May 6, 1997]

§1493.60 Payment guarantee.

(a) *CCC's obligation*. The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the foreign bank fails to pay under the foreign bank letter of credit or the related obligation. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage*. The payment guarantee will apply to the period beginning either on the date(s) of export(s) or on the date when interest begins to accrue, whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC payment guarantee*. The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date to export*. The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances*. The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying

the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports*. Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for GSM–102 or GSM–103 guarantee coverage, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign agricultural component*. CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in § 1493.20(z). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional requirements*. The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments*. A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§ 1493.70 Guarantee rates and fees.

(a) *Guarantee fee rates*. The payment guarantee fee rates will be based upon the length of the payment terms provided for in the export sale contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration. A current schedule of the guarantee fee rates charged by CCC under GSM–102 and GSM–103 will be available upon request from the FAS/USDA office specified in the Contacts P/R.

(b) *Calculation of fee*. The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of fee*. The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of fee*. Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

§ 1493.80 Evidence of export.

(a) *Report of export*. The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

(1) Payment guarantee number

(2) Date of export

(3) Exporter's sale number

(4) Exported value

(5) Quantity

(6) A full description of the commodity exported

(7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference.

(8) Description and value of discounts and allowances, if any.

(9) Number of the Agreement assigned by USDA under another program if any portion of the export sale was also approved for participation in the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program.

(10) The exporter's statement, ''All §1493.90 Certifications Are Being Made In This Evidence Of Export'' which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in §1493.90.

(b) *Time limit for submission of evidence of export*. The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:

(1) Significant financial harm to CCC;

(2) The undermining of an essential regulatory purpose of the program;

(3) Obstruction of the fair administration of the program; or

(4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is determined by the GSM to be in the best interests of CCC.

(c) *Export sales reporting*. Exporters may have a mandatory reporting responsibility under Section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), as amended by Section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.

§ 1493.90 Certification requirements for the evidence of export.

By providing the statement contained in §1493.80(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter breaches or violates these certifications with respect to a GSM–102 or GSM–103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in §1493.80(a)(10), certifies that:

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by §1493.20(z).

(b) Agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) A letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported;

(d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(e) The information provided pursuant to § 1493.30 has not changed, the exporter still meets all of the qualification requirements of § 1493.30 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

[59 FR 52876, Oct. 19, 1994, as amended at 62 FR 24561, May 6, 1997]

§ 1493.100 Proof of entry.

(a) *Diversion*. The diversion of commodities covered by a GSM–102 or GSM–103 payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of proof of entry*. Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the GSM–102 or GSM–103 programs in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;

(2) The identification of the export carrier;

(3) The quantity of the agricultural commodity;

(4) The kind, type, grade and/or class of the agricultural commodity; and

(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. [Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.110(b)(4)(ii).]

§ 1493.110 Notice of default and claims for loss.

(a) *Notice of default*. If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the foreign bank (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

(1) Payment guarantee number;

(2) Name of the country;

(3) Name of the defaulting bank;

(4) Due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;

(6) Date of foreign bank's refusal to pay, if applicable; and

(7) Reason for foreign bank's refusal to pay, if known.

(b) *Filing a claim for loss*. A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Payment guarantee number;

(2) A certification that the scheduled payment has not been received;

(3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the foreign bank obligation applicable to the claim;

(4) A copy of each of the following documents, with a cover document containing a signed certification by the

exporter or the exporter's assignee that each page of each document is a true and correct copy:

(i)(A) The foreign bank letter of credit securing the export sale; and

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter. Such related obligation must be demonstrated in one of the following ways:

(*1*) The related obligation, including a specific promise to pay on deferred payment terms, may be contained in the letter of credit as a special instruction from the issuing bank directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for obligations financed according to the tenor of the letter of credit; or

(*2*) The related obligation may be memorialized in a separate document(s) specifically identified and referred to in the letter of credit as the agreement under which the foreign bank is obliged to repay the U.S. financial institution on deferred payment terms; or

(*3*) The letter of credit payment obligations may be specifically identified in a separate document(s) setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by the U.S. financial institution pursuant to, and subject to repayment in accordance with the terms of, such related obligation; or

(*4*) The related obligation may be memorialized in the form of a promissory note executed by the foreign bank issuing the letter of credit in favor of the U.S. financial institution submitting the claim;

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;

(iii)(A) The exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or

(B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable; and

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to §1493.80(a).

(c) *Subsequent claims for defaults on installments*. If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the foreign bank to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b)(1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§ 1493.120 Payment for loss.

(a) *Determination of CCC's liability*. Upon receipt in good order of the information and documents required under §1493.110, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability*. CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the day of reciept of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under § 1493.80 and § 1493.90, excluding post-export adjustments (i.e., corrections to evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.110.

§ 1493.130 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the foreign bank of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer, the foreign bank, or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC.

The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries*. Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a GSM–102 or GSM–103 payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC*. Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under GSM–102 or GSM–103. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith*. The violation by an exporter of the certifications in § 1493.50(b) and § 1493.90(d) or the failure of an exporter to comply with the provisions of § 1493.100 or § 1493.140(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries*. Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

APPENDIX A TO § 1493.130—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC's policy, as set forth in § 1493.130(c), regarding pro rata sharing of recoveries made for claims filed under the GSM–102 and GSM–103 programs. A typical case might be as follows:

1. The U.S. bank enters into a $300,000 three-year credit arrangement with the foreign bank calling for equal annual payments of principal and annual payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. The foreign bank fails to make the final principal payment of $100,000 and an interest payment of $10,000, both due on January 31.

3. On February 10, the U.S. bank files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 98 percent of the principal amount due ($98,000) and interest at a rate of 8 percent per annum (basis 365 days) on 98 percent of the principal ($7,840).

5. CCC pays the claim on February 22.

6. The latest bond equivalent rate of the 52-week Treasury bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment (January 31) is 9 percent. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (February 11) is 7 percent.

COMPUTATION OF OBLIGATIONS

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:

(a)	Principal coverage—(98% × $100,000).	$98,000.00
(b)	Interest coverage—(8% × $98,000).	$7,840.00
.....		$105,840.00

(c)	Late interest due from CCC (7% per annum for 11 days × $105,840).	$223.28
(d)	Amount paid by CCC on February 22.	$106,063.28

2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:

(a)	Principal due January 31.	$100,000.00
.....	Interest due January 31 (10% × $100,000).	$10,000.00
.....	Amount owed by foreign bank as of January 31.	$110,000.00
(b)	Penalty interest due (12% per annum for 22 days × $100,000).	$795.62
(c)	Amount owed by foreign bank as of February 22.	$110,795.62

3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: $4,668.55

COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party's respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is $110,000, CCC would be entitled to 95.75 percent ($106,063.07 divided by $110,765.62) and the holder of the payment guarantee would be entitled to 4.21 percent ($4,668.55 divided by $110,795.62) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.130(b) would apply.

§ 1493.140 Miscellaneous provisions.

(a) *Assignment*. (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

(i) Made to one party acting for two or more parties or

(ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment*. A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC; or

(2) Is the financial institution issuing the letter of credit or branch, agency, or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(c) *Ineligibility of financial institutions to receive proceeds*. A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Is the financial institution issuing the letter of credit or a branch, agency, or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) *Alternative satisfaction of payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a GSM–102 or GSM–103 payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by §1493.100(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants relating to the GSM–102 or GSM–103 program, as applicable. Applicants for payment guarantees under these programs are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for

the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(i) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR part 1493) 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 0551–0004.

Subpart C—CCC Facility Guarantee Program (FGP) Operations

SOURCE: 62 FR 42656, Aug. 8, 1997, unless otherwise noted.

§ 1493.200 General statement.

This subpart governs the Commodity Credit Corporation's (CCC) Facility Guarantee Program (FGP). CCC will issue facility payment guarantees for project applications meeting the terms and conditions of the Facility Guarantee Program (FGP) and where private sector financing is otherwise not available. This subpart describes the criteria and procedures for applying for a facility payment guarantee, and contains the general terms and conditions of such a guarantee. These general terms and conditions may be supplemented by special terms and conditions specified in program announcements or notices to participants published prior to the issuance of a facility payment guarantee and, if so, will be incorporated by reference on the face of the facility payment guarantee issued by CCC.

§ 1493.210 Definition of terms.

Terms set forth in this subpart will have the following meaning:

Assignee. A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive payment under the facility payment guarantee.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the U.S. Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948, *as amended,* 15 U.S.C. 714 *et seq.*, and subject to the general supervision and direction of the Secretary of Agriculture.

Contacts P/R. A notice issued by Foreign Agricultural Service, U.S. Department of Agriculture (FAS/USDA) by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of facility payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

Contract value. The total negotiated dollar amount for the export sale of goods and services to emerging markets.

Date of export for goods. The on-board date of an ocean bill of lading or an airway bill, the on-board ocean carrier date of an intermodal bill of lading; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the government of the importing country.

Date of export for services. The date interest begins to accrue on credit extended to cover payment for services, except for freight and marine insurance where the date of export is the same date as for the goods exported.

Discounts and allowances. Any consideration provided directly or indirectly, by or on behalf of an exporter, to an importer in connection with a sale of goods or services, in excess of the value of such goods or services. Discounts or allowances include, but are not limited to, the provision of additional goods,

services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligation; or the whole or partial release of the importer from any financial or contractual obligation.

Facility. An opportunity or project that improves the handling, marketing, processing, storage, or distribution of imported agricultural commodities or products.

GSM. The General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, acting in his capacity as Vice President, CCC; or his designee.

U.S. goods. Goods that are assembled, processed or manufactured in, and exported from, the United States including goods which contain imported raw materials or imported components.

U.S. services. Services performed by citizens or legal residents of the United States, including those temporarily residing outside the United States.

§ 1493.220 Exporter eligibility.

An exporter may apply for a facility payment guarantee if such exporter:

(a) Is a citizen or legal resident of the United States or is a business organized under the laws of any state of the United States or the District of Columbia;

(b) Has an established place of business in the United States;

(c) Has a registered agent for service of process in the United States; and

(d) Is not suspended or debarred, or owned or controlled by a person who is suspended or debarred, from contracting with, or participating in programs administered by, a U.S. Government agency.

§ 1493.230 Eligible transactions.

(a) *Program announcements*. From time to time CCC will issue program announcements indicating the availability of facility payment guarantees in connection with sales of goods or services to emerging markets. The announcements will specify the emerging markets, the maximum amount, in U.S. dollars, of guarantee exposure that CCC will undertake, and may specify special terms or conditions that will be applicable.

(b) *Sale requirements*. CCC will issue facility payment guarantees only in connection with projects that CCC determines will benefit primarily exports of U.S. agricultural commodities and products, and only where there is a firm contract for the sale of goods or services for the establishment or improvement of an agriculture-related facility. The contract may be contingent, however, on the issuance of a CCC facility payment guarantee.

(c) *Initial payment requirement*. The contract for sale of goods or services between the exporter and the importer shall oblige the importer to make an initial payment(s) to the exporter of at least 15 percent of the net contract value in § 1493.260(b)(1). Such initial payment(s) shall be in U.S. dollars or instruments having a definite value in U.S. dollars, and shall be made prior to the export of the goods or services.

(d) *Required method of payment*. CCC will issue a facility payment guarantee only in connection with a sale in which payment will be made under either:

(1) An irrevocable foreign bank letter of credit specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as payments become due; or

(2) An irrevocable foreign bank letter of credit supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obligated to make payment in U.S. dollars as such payments become due.

(e) *Form of letter of credit*. The foreign bank letter of credit referred to in paragraph (d) of this section shall be an irrevocable commercial letter of credit, subject to the revision of the International Chamber of Commerce Uniform Customs and Practices for Documentary Creditsλ in effect when the letter of credit is issued, providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(f) *Form of related obligation*. The related obligation referred to in paragraph (d) of this section shall be in one of the following forms:

(1) A letter of credit including a specific promise to pay on deferred payment terms as a special instruction from the issuing bank directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for obligations financed according to the tenor of the letter of credit;

(2) A separate document specifically identified and referred to in the letter of credit as the agreement under which the foreign bank is obligated to repay the U.S. financial institution on deferred payment terms;

(3) A separate document setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by a U.S. financial institution pursuant to, and subject to, repayment in accordance with the terms of such related obligation; or

(4) A promissory note executed by a foreign bank issuing the letter of credit in favor of the financial institution.

§ 1493.240 Initial application and letter of preliminary commitment.

(a) *Initial application*. An exporter may apply for a facility payment guarantee by submitting the following information:

(1) A cover sheet with the title: ''Application for a Facility Payment Guarantee—Preliminary Commitment'';

(2) The program announcement number;

(3) The emerging market;

(4) The name, contact person, address, and telephone number and, if applicable, facsimile number and E-mail address of:

(i) The exporter;

(ii) The exporter's registered agent for service of process in the United States;

(iii) The exporter's assignee, if applicable;

(iv) The importer;

(v) The end-user of the goods or services if other than the importer;

(vi) The foreign bank expected to issue the letter of credit or related obligation; and

(vii) The financial institution in the United States expected to provide financing;

(5) A statement on letterhead from a:

(i) Foreign bank indicating an interest in guaranteeing payment, in U.S. dollars, for goods or services to be exported under the facility payment guarantee at least equal to the net contract value listed in paragraph (a)(14) of this section, less the initial payment requirement listed in paragraph (a)(15) of this section; and

(ii) Financial institution in the U.S. indicating an interest in financing the export sales of goods or services under the facility payment guarantee for an amount at least equal to the net contract value listed in paragraph (a)(14) of this section less the initial payment requirement listed in paragraph (a)(15) of this section. The financial institution must state that such financing would not otherwise be available without an FGP payment guarantee;

(6) The period for which credit is being extended to finance the sale of goods or services covered by the facility payment guarantee;

(7) The exporter's sales number pertinent to this application and a description of the status of the intended sale;

(8) A description (e.g., a process flow diagram) of the agriculture-related facility that will use the goods or services to be covered by the facility payment guarantee and an explanation of how these goods and services will be used to improve handling, marketing, processing, storage, or distribution of agricultural commodities or products;

(9) A brief description of each good or service to be covered by the facility payment guarantee including, where applicable, brand name, model number, Standard Industrial Classification (SIC) or the North American Industry Classification System (NAICS) code, and contract specifications;

(10) The final date for export of goods or services. If applicable, include construction start date, milestones (e.g., installation), and contractual deadline for completion of project;

(11) The contract value for the sale of goods or services and the basis of sale for goods to be exported (e.g., FOB, CFR, CIF);

(12) The description and value of the goods or cost of services listed in paragraph (a)(11) of this section that are not U.S. goods or services;

(13) Identification and cost of, and justification for, those services listed in paragraph (a)(12) of this section for which the exporter requests CCC to provide coverage;

(14) The net contract value in § 1493.260(b)(1) obtained by subtracting paragraph (a)(12) of this section from paragraph (a)(11) of this section, and adding paragraph (a)(13) of this section;

(15) The amount to be paid in accordance with the initial payment requirement (§ 1493.230(c));

(16) The description and dollar amount of discounts and allowances provided in connection with the sale of goods or services covered by the facility payment guarantee;

(17) The facility base value in § 1493.260(b)(2) obtained by subtracting paragraphs (a)(15) and (a)(16) of this section from paragraph (a)(14) of this section;

(18) The maximum guaranteed value under the facility payment guarantee determined by multiplying the facility base value listed in paragraph (a)(17) of this section by the guarantee rate of coverage announced by CCC in § 1493.260(b)(3);

(19) A map or other description of the facility's location and distance from major population centers of neighboring countries;

(20) For all principal agricultural commodities or products (inputs) to be handled, marketed, processed, stored, or distributed, by the proposed project after completion, provide:

(i) A list or table identifying such principal inputs;

(ii) The likely countries of origin for each input;

(iii) Estimated annual quantities, in metric tons, of each input listed in paragraph (a)(20)(i) of this section to be used by the project for five years from the final date of export or until the expiration of the facility payment guarantee, whichever comes first; and

(iv) An analysis, including price, cost, and other assumptions (the reasons why U.S. agricultural commodities or products will be more competitive inputs than commodities or products from other sources, and whether the projected use of U.S. agricultural commodities or products depends on the availability of U.S. export bonus or credit guarantee programs), of which inputs listed in paragraph (a)(20)(i) of this section will represent increased imports of U.S. agricultural commodities or products:

(A) To a greater degree than imports of agricultural commodities or products from other countries;

(B) To or at levels significantly above those expected in the absence of the project; and

(C) For a period of five years from the final date of export or until expiration of the facility payment guarantee, whichever comes first.

(21) If applicable, a list of agricultural outputs or final products of the proposed project and:

(i) Projected annual quantities (for five years or until the expiration of the facility payment guarantee, whichever comes first), in metric tons, of each output to be marketed;

(A) Within the emerging market; and

(B) In any other country;

(ii) Quantities, by country of origin, of products imported into the emerging market during the past year which would compete with such outputs; and

(iii) An analysis of whether products of the project will significantly displace U.S. exports of similar agricultural commodities or products in any market;

(22) If applicable, a description of any arrangements or understandings with other U.S. or foreign government agencies, or with financial institutions or entities, private or public, providing financing to the exporter in connection with this export sale, and copies of any documents relating to such arrangements;

(23) A description of the exporter's experience selling goods or providing services similar to those for which the exporter seeks to obtain facility payment guarantee coverage;

(24) A statement of how this project may encourage privatization of the agricultural sector, or benefit private farms or cooperatives, in the emerging market. Include in the statement the share of private sector ownership of the project;

(25) The exporter's signature.

(b) *Application fee.* The exporter shall pay the application fee specified in the program announcement at the time the

application is submitted. An application will not be considered without payment of the specified fee. The application fee is nonrefundable.

(c) *Letter of preliminary commitment.* CCC will determine whether, in its judgment, the project in connection with which the exporter seeks a facility payment guarantee is likely to increase exports of U.S. agricultural commodities or products to an emerging market; and whether the project is likely to benefit primarily U.S. agricultural commodities or products as opposed to commodities or products originating in other countries. If necessary, CCC may seek additional information from an applicant prior to making its determination. If CCC determines that an application meets these standards and appears to represent, in CCC's judgment, the best use of available resources, CCC will respond to the applicant with a letter of preliminary commitment indicating CCC's interest in issuing a facility payment guarantee conditioned on its approval of the exporter's final application.

§ 1493.250 Final application and issuance of a facility payment guarantee.

(a) *Final application.* An exporter who has received a letter of preliminary commitment may, within six months of the date of such letter, submit a final application to CCC for a facility payment guarantee which shall include the following information:

(1) A cover sheet with the title: ''Application for a Facility Payment Guarantee—Final Commitment.''

(2) A letterhead statement from the importer's bank or other documentation confirming the importer has the financial ability to comply with the initial payment requirement in § 1493.230(c);

(3) Written evidence of a firm sale signed by the exporter and the importer, specifying at minimum, the following information: Goods or services to be exported, quantities of such items, delivery terms (e.g., FOB, CFR, CIF), delivery period(s), contract value, payment terms, and date of sale. A sales contract may be contingent upon obtaining a facility payment guarantee;

(4) A description of any changes in the information submitted in the preliminary application; and

(5) The exporter's signature;

(b) *Additional information.* CCC shall have the right to request the exporter to furnish any other information and documentation it deems pertinent to the evaluation of the exporter's final application for a final commitment. CCC may request from the exporter an independent engineering study or economic feasibility study relating to the project.

(c) *Final commitment letter.* After making a favorable determination on the exporter's submissions, CCC will issue a final commitment letter indicating the applicable exposure fee rate and stating that CCC is prepared to issue a facility payment guarantee upon receiving full payment of the exposure fee within an allotted time. The letter will also indicate the key terms and coverage of the guarantee to be issued. CCC will also inform exporters in writing when it denies their request for a facility payment guarantee.

(d) *Exposure fee.* The exposure fee is calculated by multiplying the requested guaranteed value (up to the maximum established by CCC's final commitment letter) by the exposure fee rate. Once the facility payment guarantee is issued to the exporter, CCC will ordinarily not refund the exposure fee. If CCC does not issue a facility payment guarantee, or issues a guarantee for only part of the coverage requested, CCC will make a full or *pro rata* refund of the exposure fee, as appropriate.

(e) *Issuance of the facility payment guarantee.* Upon receipt of the exposure fee, CCC will issue a facility payment guarantee.

§ 1493.260 Facility payment guarantee.

(a) *CCC's maximum obligation.* CCC will agree to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value stipulated on the face of the facility payment guarantee, plus eligible interest, in the event that the foreign bank fails to pay under the foreign bank letter of credit or related obligation. The exact

amount of CCC's liability in the event of default will be determined in accordance with § 1493.310(b).

(b) *Calculation of maximum guarantee coverage.* CCC will determine the maximum amount of its obligation under a facility payment guarantee by calculating a:

(1) Net contract value equal to the contract value minus:

(i) The value of goods that are not U.S. goods; and

(ii) The cost of services that are not U.S. services (except those services the exporter requests CCC to determine are vital to the success of the project and approved to be included in the net contract value);

(2) Facility base value equal to net contract value minus:

(i) The amount to be paid in accordance with the initial payment requirement in § 1493.230(c); and

(ii) The amount of discounts and allowances; and

(3) Maximum guaranteed value equal to:

(i) A principal amount determined by multiplying the facility base value (as determined in § 1493.260(b)(2)) by the guaranteed percentage specified in the program announcement; and

(ii) Interest on such principal amount at the rate specified in the applicable program announcement, not to exceed the investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(c) *Value and cost.* For the purposes of this section:

(1) *Value* means declared customs value of the goods; or, in the absence of specific information regarding declared customs value, the fair market wholesale value of the imported goods in the United States at the time they were acquired by the participant; and

(2) *Cost* means actual amount paid by the exporter for the services in an arms-length transaction; or in the absence of an arms-length transaction, the fair market value of the services at the time the services were provided.

(d) *U.S. content test.* (1) CCC will issue a guarantee only if the following items collectively represent less than 50 percent of the net contract value in § 1493.260(b)(1):

(i) The value of imported components (except for raw materials) that are assembled, processed, or manufactured into U.S. goods included in the net contract value;

(ii) The cost of services that are not U.S. services (including freight on foreign flag carriers and transportation insurance registered with foreign agents) that, at the request of the exporter, CCC determines are vital to the success of the project and approves their inclusion in the net contract value;

(2) For purpose of this subsection, minor or cosmetic procedures (e.g., affixing labels, cleaning, painting, polishing) do not qualify as assembling, processing or manufacturing;

(3) For purpose of this subsection, local services which involve costs for hotels, meals, transportation, and other similar services incurred in the emerging market are not U.S. services.

(e) *Period of guarantee coverage.* The payment guarantee will apply to the period beginning on the date(s) of export(s) and will continue during the credit term specified in the facility payment guarantee. For goods, the period of coverage will also apply from the date on which interest begins to accrue, if earlier than the date of export. The final payments of principal and interest by the foreign bank must come due within the period of guarantee coverage.

(f) *Terms of the CCC facility payment guarantee.* The terms of CCC's coverage will be set forth in the facility payment guarantee and will include the provisions of this subpart, which may be supplemented by any program announcement(s) or notice(s) to participants in effect at the time the facility payment guarantee is approved by CCC.

(g) *Final date to export.* The final date to export will be stated in the facility payment guarantee.

(h) *Ineligible exports.* Goods or services with a date of export prior to the date CCC issues the facility payment guarantee are ineligible for coverage unless approved by the GSM.

(i) *Additional requirements.* The facility payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or

desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the facility payment guarantee, are binding on the exporter or the exporter's assignee.

(j) *Amendments*. Exporters must notify CCC of any amendments concerning contracts covered by a facility payment guarantee. CCC will determine if the contract amendments will require amendments to the facility payment guarantee. Amending the facility payment guarantee may result in an increase to the exposure fee. Requests made by the exporter to amend the facility payment guarantee so as to change the guaranteed value must have the concurrence of the assignee when an assignment has been made.

(k) *Effective date*. The facility payment guarantee shall become effective on the date of export of the goods or services.

APPENDIX TO § 1493.260—ILLUSTRATION OF FGP COVERAGE OF IMPORTED RAW MATERIALS, COMPONENTS, AND SERVICES THAT ARE NOT U.S. SERVICES

The following example illustrates CCC's regulations and policy options with regard to issuing a payment guarantee for a project which includes imported raw materials, imported components, and services that are not U.S. services:

1. Ten grain trucks and one truck scale are to be exported from the U.S. to an emerging market. The trucks will provide the ability to purchase larger quantities of grain from the U.S. The contract value totals $2,025,000, cost, insurance and freight (CIF) basis.

2. The fenders, hoods and doors of the trucks have been manufactured and assembled in the U.S. and contain some imported raw materials (sheet metal).

3. Imported components consist of starters and alternators, with a U.S. customs valuation of $149,000. These items are installed into the trucks in the U.S.

4. The truck scale was imported from Canada into the U.S. with a U.S. customs valuation of $20,000.

5. A U.S. citizen, will travel on a foreign airline carrier to the emerging market (airfare is $1,000) to instruct mechanics in repair and maintenance of the trucks. He will be paid a salary for this service and, in addition, will be reimbursed separately for local costs in the emerging market (e.g., hotel, meals, transportation) which are estimated to be $5,000.

6. The trucks are to be shipped on foreign flag vessels, and the marine insurance is to be placed with a foreign agent. The combined cost of these services that are not U.S. services for which the exporter seeks coverage is estimated to be $500,000.

CCC'S APPROVAL OF SERVICES THAT ARE NOT U.S. SERVICES

CCC agrees to include in the net contract value the foreign flag freight and marine insurance ($500,000) and the airfare ($1,000) of the U.S. instructor (§ 1493.260(b)(1)).

CALCULATION OF NET CONTRACT VALUE

CCC will calculate the net contract value by subtracting from the contract value ($2,025,000) the U.S. customs value of the truck scale ($20,000) in accordance with § 1493.260(b)(1)(I) and the local costs to be incurred by the U.S. instructor ($5,000) in accordance with § 1493.260(b)(1)(ii) to equal $2,000,000.

CCC'S DETERMINATION OF U.S. CONTENT ELIGIBILITY

The imported components and services that are not U.S. services approved for coverage total $650,000 (i.e., $149,000 for starters and alternators, $1,000 for airfare, $500,000 for freight and insurance; or 32.5 percent of the net contract value of $2,000,000 (§ 1493.260(b)(1)). Since this is less than 50 percent of the net contract value the transaction meets the U.S. content test (§ 1493.260(d)).

§ 1493.270 Certifications.

(a) *Exporter's signature*. The exporter's signature on documentation submitted to CCC under this subpart, is the exporter's certification that:

(1) There have not been and are no arrangements for any payments in violation of the Foreign Corrupt Practices Act of 1977, as amended, or other U.S. Laws;

(2) All information submitted to CCC is true and correct; and

(3) The exporter is in compliance with this subpart.

(b) *False certification*. False certifications under this subpart may result in the termination of the facility payment guarantee, suspension or debarment, or civil or criminal action.

§ 1493.280 Evidence of export report.

(a) *Report of export*. The exporter is required to provide CCC an evidence of export report for each shipment of goods or provision of services covered under the facility payment guarantee. Each report must be numbered in

chronological order and contain the following information in the order prescribed below:

(1) The facility payment guarantee number;

(2) The date goods or services were exported or provided;

(3) The exporter's sale number, bill of lading numbers, or identification of other documents that may be submitted to establish the contract value of the goods or services exported or provided;

(4) The net contract value of the exported goods or services as determined in accordance with § 1493.260(b)(1);

(5) The amount paid in accordance with the initial payment requirement (§ 1493.230 (c));

(6) A description and dollar value of discounts and allowances, if any;

(7) The exported value of the shipment which is the net contract value of the goods or services exported in paragraph (a)(4) of this section minus:

(i) The initial payment requirement listed in paragraph (a)(5) of this section; and

(ii) The dollar amount of any discounts and allowances listed in paragraph (a)(6) of this section;

(8) The name of the carrier and, if applicable, the name of the vessel;

(9) The final payment schedule showing the payment due dates and amounts of principal, and payment due dates for interest accrual. If the payment schedule is unknown, the exporter must indicate in writing that: ''The payment schedule will be provided in an amendment to the evidence of export report when the payment schedule has been determined;''

(10) Written statements that:

(i) The goods exported or services provided were included in the final application for a final commitment as approved by CCC for coverage under the facility payment guarantee and this subpart;

(ii) The specifications and quantity of goods or services exported conform to the information contained in the exporter's application documents for a facility payment guarantee, or if different, that CCC has approved of such changes;

(iii) A letter of credit has been opened in favor of the exporter by the foreign bank shown on the facility payment guarantee to cover the dollar amount of the sale of goods or services exported less the amount paid in accordance with the initial payment requirement and less discounts and allowances; and

(11) The exporter's signature.

(b) *Final report of export*. The final evidence of export report submitted under a facility payment guarantee must contain:

(1) A written statement that exports under the facility payment guarantee have been completed;

(2) The information requested in § 1493.280(a) for the shipment(s) included in the final report; and

(3) The combined total of all dollar amounts reported under § 1493.280 (a) and (b) for all reports.

(c) *Time limit for submission of evidence of export report*. Unless extended by CCC for good cause, the exporter must submit to CCC an evidence of export report:

(1) Within 60 days of the date goods are exported by rail or truck;

(2) Within 30 days of the date goods are exported by any other carrier; or

(3) Within 30 days of the date of export of services.

(d) *Late reports*. If the evidence of export report is not received by CCC within the time period for filing, the facility payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would likely result, in:

(1) Significant financial harm to CCC;

(2) The undermining of an essential regulatory purpose of the FGP;

(3) The obstruction of the fair administration of the FGP; or

(4) A threat to the integrity of the FGP.

§ 1493.290 Proof of entry.

(a) *Diversion*. The diversion of goods covered by a facility payment guarantee to a country other than that shown on the facility payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of proof of entry*. Exporters must obtain and maintain records of an

official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the goods authorized by the facility payment guarantee. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include:

(1) For goods: An original certificate, signed by a duly authorized customs or port official of the emerging market, by the importer, by an agent or representative of the vessel or ship line which delivered the goods to the emerging market, or by a private surveyor in the emerging market, or other documentation deemed acceptable by CCC:

(i) Showing that the goods entered the emerging market;

(ii) Identifying the export carrier;

(iii) Describing the goods; and

(iv) Indicating date and place the goods were unloaded in the emerging market.

(2) [Reserved]

§ 1493.300 Notice of default and claims for loss.

(a) *Notice of default.* If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than ten days after the date that payment was due from the foreign bank (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the facility payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if approved by the Controller, CCC. The notice of default must include:

(1) Facility payment guarantee number;

(2) Name of the emerging market;

(3) Name of the defaulting bank;

(4) Payment due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;

(6) Date of foreign bank's refusal to pay, if applicable; and

(7) Reason for the foreign bank's refusal to pay, if known.

(b) *Filing a claim for loss.* A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Facility payment guarantee number;

(2) A certification that the scheduled payment has not been received;

(3) A certification of the amount of accrued interest in default, the date interest began to accrue and the interest rate on the foreign bank obligation applicable to the claim; and

(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

(i)(A) The foreign bank's letter of credit securing the export sale, and;

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter.

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill; or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the emerging market;

(iii) The exporter's sales invoice(s) showing the value and basis of sale (e.g., FOB, CFR, or CIF) or, if services are billed separately, documents that the exporter or its assignee relied upon in extending the credit to the issuing foreign bank;

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable; and

(v) A copy of the evidence of export report(s) previously submitted by the exporter to CCC pursuant to § 1493.280.

(c) *Subsequent claims for defaults on installments*. The exporter or an exporter's assignee need only provide one claim which meets full documentation requirements relating to a covered transaction. For subsequent claims relating to such failures of the foreign bank to make scheduled installments on the same export, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraphs (b) (1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and the date the original claim was filed with CCC.

§ 1493.310 Payment for loss.

(a) *Determination of CCC's liability*. Upon receipt in good order of the information and documents required under § 1493.300, CCC will determine whether or not a loss has occurred for which CCC is liable under the facility payment guarantee, this subpart, program announcement(s) and notice(s) to participants. If CCC determines that it is liable to the exporter or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability*. CCC's maximum liability for any claims for loss submitted with respect to any facility payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the facility payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the facility payment guarantee) of the exported value indicated in the evidence of export report (§ 1493.280(a)(7)), plus eligible interest.

(c) *Late interest payment*. If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the claim was found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments*. CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interest of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee*. Notwithstanding any other provision in this subpart to the contrary, with regard to the value of goods or services covered by a facility payment guarantee, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under § 1493.270 and § 1493.280 excluding post-export adjustments (i.e., corrections of evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.300.

§ 1493.320 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the foreign bank of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer, the foreign bank or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a facility payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the facility payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 days from the date of recovery or 15 days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the facility payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter's assignee or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a facility payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix to § 1493.320 provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the facility payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the facility payment guarantee when and if it is determined by CCC that the exporter engaged in fraud, or has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the facility payment guarantee or for fulfilling obligations under the FGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the facility payment guarantee when and if it is determined by CCC that the exporter's assignee engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in § 1493.270 or the failure of an exporter to comply with the provisions of § 1493.290 or § 1493.330(e) will not affect the validity of any facility payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the facility payment guarantee or at the time of assignment of the facility payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the foreign bank or the importer.

APPENDIX TO § 1493.320—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC's policy, as set forth in § 1493.320, regarding pro rata sharing of recoveries made for claims filed under the FGP. For the purpose of this example only, even though CCC interest coverage is on a floating rate basis, a constant rate of interest is assumed. A typical case might be as follows:

1. The U.S. bank enters into a $300,000 three-year credit arrangement for the export sale of goods and services with the foreign bank calling for equal semi-annual payments of principal and semi-annual payment of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. Exported value reported to CCC equals $300,000.

3. The foreign bank fails to make the final principal payment of $50,000 and an interest payment of $2,493.15, both due on January 31.

4. On February 10, the U.S. bank files a notice of default and claim in good order with CCC.

5. CCC's guarantee states that CCC's maximum liability is limited to 95 percent of the principal amount due ($47,500) and interest at a rate of 8 percent per annum (basis 365 days) on 95 percent of the principal ($1,894.80).

6. CCC pays the claim on February 22.

7. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (February 11) is 7 percent.

COMPUTATION OF OBLIGATIONS

Using the above case, CCC's payment to the holder of the facility payment guarantee would be computed as follows:

1. CCC's Obligation under the Facility Payment Guarantee:	
(a) Principal coverage—(95% × $50,000)	$47,500.00
(b) Interest coverage—(8% × $47,500 × 182/365)	1,894.80
Total	49,394.80
(c) Late interest due from CCC (7% per annum for 11 days × $49,394.80)	104.20
(d) Amount paid by CCC on February 22	49,499.00
2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:	
(a) Principal due January 31	50,000.00
Interest due January 31 (10% × $ 50,000 × 182/365)	2,493.15
Amount owed by foreign bank as of January 31	52,493.15
(b) Penalty interest due (12% per annum for 22 days × $ 50,000)	361.64
(c) Amount owed by foreign bank as of February 22	52,854.79
3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee:	3,355.79.

COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party's respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is $52,854.79, CCC would be entitled to 93.65 percent ($49,499.00 divided by $52,854.79) and the holder of the facility payment guarantee would be entitled to 6.35 percent ($3,355.79 divided by $52,854.79) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim had been paid by CCC, § 1493.320(b) would apply.

§ 1493.330 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a facility payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the facility payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be subject to further assignment. Any assignment may be made to one party as agent or trustee for two or more parties participating in the assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases

where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof to such financial institution and to the exporter issued the facility payment guarantee in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a facility payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC; or

(2) Is the financial institution issuing the letter of credit or a branch, agency or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(c) *Ineligibility of financial institutions to receive proceeds.* A financial institution will be ineligible to receive proceeds payable under a facility payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a facility payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Is the financial institution issuing the letter of credit or a branch, agency, or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) *Alternative satisfaction of facility payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the facility payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms or conditions for the satisfaction of CCC's obligations under a facility payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the facility payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a facility payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for goods or services exported in connection with a facility payment guarantee, including those records generated and maintained by agents, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the facility payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, or a related company's books, records, and accounts concerning transactions relating to the facility payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, manufacturing, processing, and administrative and incidental costs, both normal and unforeseen.

(2) The exporter must maintain the proof of entry required by §1493.290(b), and must provide access to such document if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, this subpart, program announcement(s), and notice(s) to participants relating to the FGP, as applicable. Applicants for facility payment guarantees under this

program are hereby on notice that they will be bound by any terms contained in applicable program announcement(s) or notice(s) to participants issued prior to the date of approval of a facility payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by:

(1) Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and

(2) The name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under this subpart are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of the facility payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the facility payment guarantee if made with a corporation for its general benefit.

(i) *Deadlines.* (1) Where a deadline is fixed in terms of days, it means business days and excludes Saturdays, Sundays and federal holidays.

(2) Where a deadline is fixed in terms of months, the deadline falls on the same day of the month as the day triggering the deadline period, or if there is no same day, the last day of the month; and

(3) Where a deadline would otherwise fall on a Saturday, Sunday or federal holiday, the deadline shall be the next business day.

Subpart D—CCC Supplier Credit Guarantee Program Operations

SOURCE: 61 FR 33831, July 1, 1996, unless otherwise noted.

§ 1493.400 General statement.

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Supplier Credit Guarantee Program (SCGP). The restrictions and criteria set forth at subpart A for the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103) will apply to this subpart. The SCGP was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. exporters to extend financing on credit terms of not more than 180 days to importers of U.S. agricultural commodities.

(2) The SCGP operates in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. exporters would be unwilling to provide financing without CCC's guarantee. The program is operated in a manner intended not to interfere with markets for cash sales. The program is targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by this program is the SCGP payment guarantee (payment guarantee). The payment guarantee is an agreement by

CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and, where applicable, interest due from, but not paid by, the importer incurring the obligation in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than government, financing and incurs a substantial portion of the risk of default by the importer. CCC assumes this risk, in order to be able to operate the program for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* (1) For the purpose of the SCGP, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made under an unconditional and irrevocable importer obligation to a U.S. exporter payable in U.S. dollars, as defined in § 1493.410(n).

(2) The exporter may assign the right to proceeds under the importer obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the importer obligation.

(3) The SCGP payment guarantee is designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the importer under the importer's obligation.

(c) *Program administration.* The SCGP will be administered pursuant to subpart A and this subpart and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this subpart. This program is under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.410(c), ''Contacts P/R'').

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a SCGP allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products thereof, will indicate the form of promissory note required by CCC, and will provide other pertinent information. Exporters may negotiate export sales to importers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified ''undesignated'' or ''unallocated'' dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the ''unallocated'' or ''undesignated'' portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an ''unallocated'' or ''undesignated'' dollar amount will contain further information on the ''unallocated'' or ''undesignated'' portion of the country allocation.

§ 1493.410 Definition of terms.

Terms set forth in this subpart and in CCC Program Announcements, Notices to Participants, and any other CCC-originated documents pertaining to the SCGP will have the following meanings:

(a) *Assignee.* A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the

Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 *et seq.*), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R.* A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the SCGP. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) *Date of export.* One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) *Date of sale.* The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and allowances.* Any consideration provided directly or indirectly, by or on behalf of the exporter, or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(g) *Eligible interest.* The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) *Exported value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported

from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) *Exporter*. A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of § 1493.420.

(j) *FAS/USDA*. The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *GSM*. The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(l) *Guaranteed value*. The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(m) *Importer*. A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(n) *Importer obligation*. A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s).

(o) *Incoterms*. The following customary terms, as defined by the International Chamber of Commerce, Incoterms © current revision):

(1) Free Alongside Ship (FAS);

(2) Free on Board (FOB);

(3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF); and

(4) Cost Insurance and Freight (CIF).

(p) *Intervening purchaser*. A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(q) *Late interest*. Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(r) *Notice to participants*. A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

(s) *Payment guarantee*. An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee (including the required form of promissory note), this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by an importer under the importer obligation.

(t) *Port value*. (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales

contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(u) *Program announcement*. An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, the form of promissory note required for a particular country or region, and include other information and requirements.

(v) *SCGP*. The Supplier Credit Guarantee Program described by this subpart.

(w) *United States or U.S*. All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(x) *U.S. agricultural commodity*. (1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

(y) *USDA*. United States Department of Agriculture.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6 1997]

§ 1493.420 Information required for program participation.

Before CCC will accept an application for a payment guarantee under the SCGP, the applicant must qualify for participation in this program. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the program.

(a) *Submission of documentation*. In order to qualify for participation in the SCGP, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular export sale contemplated by the applicant under this subpart;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: ''I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. [''Principals,'' for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager,

plant manager, head of a subsidiary division, or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC.''

(b) *Previous qualification.* Any exporter that is qualified under subpart B, §1493.30 is qualified under this section to submit applications for a SCGP payment guarantee, and the information provided by the exporter pursuant to §1493.30 will be deemed to also have been provided under this section. Each application must include the statement required by §1493.430(a)(17) incorporating the certifications of §1493.440, including the certification in §1493.440(e) that the information previously provided pursuant to §1493.420 has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by CCC.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the SCGP if:

(1) Such applicant is currently debarred, suspended, or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or

(2) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency.

§1493.430 Application for a payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country;

(2) Name and address of the importer;

(3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country;

(4) Date of sale;

(5) Exporter's sale number;

(6) Delivery period as agreed between the exporter and the importer;

(7) A full description of the commodity (including packaging, if any);

(8) Mean quantity, contract loading tolerance and, if the exporter chooses, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance;

(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified;

(10) Description and value of discounts and allowances, if any;

(11) Port value (includes upward loading tolerance, if any);

(12) Guaranteed value;

(13) Guarantee fee;

(14) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale;

(15) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA

under one of these programs should be included, as applicable;

(16) Other information as requested by CCC or specified in Program Announcements and Notices to Participants, as applicable; and

(17) The exporter's statement, ''ALL SECTION 1493.440 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION'' which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.440.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.450(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

(c) Ineligible exporter. An exporter will be ineligible to obtain a payment guarantee if such exporter:

(1) Directly or indirectly owns or controls the importer;

(2) Is directly or indirectly owned or controlled by the importer; or

(3) Is directly or indirectly owned or controlled by a person(s) or entity(ies) which also owns or controls the importer.

§ 1493.440 Certification requirements for payment guarantee.

By providing the statement in § 1493.430(a)(17), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.430(a)(17), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.410(x).

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6, 1997]

§ 1493.450 Payment guarantee.

(a) *CCC's obligation*. The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation. unless CCC determines with respect to

the particular transaction and claim that the guaranteed portion of the port value exceeded the prevailing U.S. market value for the same, or same type of agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage*. The payment guarantee will apply to a credit period not exceeding 180 days beginning either on the date(s) of export(s) or from the date when interest begins to accrue whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC payment guarantee*. The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date to export*. The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances*. The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports*. Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for guarantee coverage under this subpart, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign agricultural component*. CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in §1493.410(x). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional requirements*. The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments*. A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an

increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§ 1493.460 Guarantee rates and fees.

(a) *Guarantee fee rates*. The current payment guarantee fee rate(s) will be available by Program Announcement.

(b) *Calculation of fee*. The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of fee*. The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of fee*. Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

§ 1493.470 Evidence of export.

(a) *Report of export*. The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

(1) Payment guarantee number;

(2) Date of export;

(3) Exporter's sale number;

(4) Exported value;

(5) Quantity;

(6) A full description of the commodity exported;

(7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference;

(8) Description and value of discounts and allowances, if any;

(9) Number of the Agreement assigned by USDA under any other program if any portion of the export sale was also approved for participation in any of the following CCC or USDA export program: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program; and

(10) The exporter's statement, ''ALL SECTION 1493.480 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT'' which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.480.

(b) *Time limit for submission of evidence of export*. The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:

(1) Significant financial harm to CCC;

(2) The undermining of an essential regulatory purpose of the program;

(3) Obstruction of the fair administration of the program; or

(4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is determined by the GSM to be in the best interests of CCC.

(c) *Export sales reporting*. Exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5712) for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.

§ 1493.480 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.470(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.470(a)(10), certifies that:

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.410(x).

(b) Agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) There is an importer obligation as defined in § 1493.410(n) to cover the exported value of the commodity exported;

(d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6, 1997]

§ 1493.490 Proof of entry.

(a) *Diversion*. The diversion of commodities covered by a SCGP payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of proof of entry*. Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the SCGP in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;

(2) The identification of the export carrier;

(3) The quantity of the agricultural commodity;

(4) The kind, type, grade and/or class of the agricultural commodity; and

(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. (Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.500(b)(4)(ii).)

§ 1493.500 Notice of default and claims for loss.

(a) *Notice of default*. If the importer fails to make payment pursuant to the terms of the importer obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the importer (the due date). A notice of default must

be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

(1) Payment guarantee number;

(2) Name of the country;

(3) Name of the defaulting importer;

(4) Due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;

(6) Date of importer's refusal to pay, if applicable; and

(7) Reason for importer's refusal to pay, if known.

(b) *Filing a claim for loss*. A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Payment guarantee number;

(2) A certification that the scheduled payment has not been received;

(3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the importer obligation applicable to the claim;

(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

(i) The importer obligation;

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;

(iii)(A) The exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or

(B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable importer obligation; and

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.470(a).

(c) *Subsequent claims for defaults on installments*. If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the importer to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b) (1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§ 1493.510 Payment for loss.

(a) *Determination of CCC's liability*. Upon receipt in good order of the information and documents required under § 1493.500, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability*. Subject to a determination by CCC with respect

to prevailing U.S. market value pursuant to § 1493.450(a) of this part, CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the day of receipt of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract or the importer obligation unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not, except pursuant to a determination under § 1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under §§ 1493.470 and 1493.480, excluding post-export adjustments (i.e., corrections to evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.500.

§ 1493.520 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent

Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to §1493.520—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under SCGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in §§1493.440(b) and 1493.480(d) or the failure of an exporter to comply with the provisions of §§1493.490 or 1493.530(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the importer.

APPENDIX A TO §1493.520—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC's policy, as set forth in §1493.520(c), regarding pro rata sharing of recoveries made for claims filed under the SCGP. A typical case might be as follows:

1. The U.S. exporter enters into a $200,000, 180 day credit arrangement with the importer calling for two equal payments of principal and two equal payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum (basis 360 days) on overdue amounts until the overdue amount is paid. (Basis for interest calculation may be 360 or 365 days.)

2. The importer fails to make the final principal payment of $100,000 and an interest payment of $2,500.00 (10% per annum for 90 days on $100,000), both due on January 31.

3. On February 10, the U.S. exporter files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 60 percent of the principal amount due ($60,000) and interest at a rate of 8 percent per annum (basis 365 days) on 60 percent of the principal outstanding ($1,183.56) (8% per annum for 90 days on $60,000). (CCC's basis for interest calculation is 365 days.)

5. CCC pays the claim on February 22.

6. The average investment rate of the most recent 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (January 31) is 7 percent. (CCC's late interest rate.)

COMPUTATION OF OBLIGATIONS

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:	
(a) Principal coverage—(60% $100,000)	$60,000.00
(b) Interest coverage—(8% per annum for 90 days on $60,000, basis 365 days)	1,183.56
.....	$61,183.56

(c) Late interest due from CCC (7% per annum for 11 days on $61,183.56, basis 365 days)	129.07
(d) Amount paid by CCC on February 22	$61,312.63
2. Importer's obligation under the importer obligation:	
(a) Principal due January 31	$100,000.00
Interest due January 31 (10% per annum for 90 days on $100,000, basis 360 days)	2,500.00
Amount owed by importer as of January 31	$102,500.00
(b) Penalty interest due (12% per annum for 22 days on $102,500.00, basis 360 days)	751.67
(c) Amount owed by importer as of February 22	$103,251.67
3. Amount of importer's obligation not covered by CCC's payment guarantee: $41,939.04 ($103,251.67–$61,312.63)..	

COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party's respective interest in any recovery of losses, the total amount due under the importer obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the importer is $103,251.67, CCC would be entitled to 59.38 percent ($61,312.63 divided by $103,251.67) and the holder of the payment guarantee would be entitled to 40.62 percent ($41,939.04 divided by $103,251.67) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.520(b) would apply.

§ 1493.530 Miscellaneous provisions.

(a) *Assignment*. (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

(i) Made to one party acting for two or more parties; or

(ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment*. A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(c) *Ineligibility of financial institutions to receive proceeds*. A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(d) *Alternative satisfaction of payment guarantees*. CCC may, with the agreement of the exporter (or if the right to

proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's, or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by § 1493.490(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants issued pursuant to this subpart. Applicants for payment guarantees are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(i) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information requirements contained in this part (7 CFR part 1493, subpart D) 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 0551–0037.

PART 1494—EXPORT BONUS PROGRAMS

Subpart A—Export Enhancement Program Criteria

Sec.
1494.10 General statement.
1494.20 Criteria.

Subpart B—Export Enhancement Program Operations

1494.101 General statement.
1494.201 Definitions of terms.
1494.301 Information required for program participation.
1494.401 Performance security.
1494.501 Submission of offers to CCC.
1494.601 Acceptance of offers by CCC.
1494.701 Payment of bonus.
1494.801 Enforcement and termination of agreements with CCC.
1494.901 Dispute resolution and appeals.
1494.1001 Miscellaneous provisions.

Subpart C—Dairy Export Incentive Program Criteria

1494.1100 General statement.
1494.1101 Criteria.

Subpart D—Dairy Export Incentive Program Operations

1494.1200 Program operations.
1494.1201 Paperwork Reduction Act.

SOURCE: 56 FR 25011, June 3, 1991, unless otherwise noted.

Subpart A—Export Enhancement Program Criteria

AUTHORITY: 7 U.S.C. 5663.

SOURCE: 56 FR 26324, June 7, 1991, unless otherwise noted.

§ 1494.10 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Commodity Credit Corporation's (CCC) Export Enhancement Program (EEP). These criteria are interrelated and will be considered together in order to select eligible commodities and eligible countries for EEP initiatives which will best meet the program's objectives. The objectives of the program are to discourage unfair trade practices by other countries, to increase U.S. agricultural commodity exports, and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems. Under the EEP, bonuses are made available by CCC to enable exporters to meet prevailing world prices for targeted commodities in targeted destinations. In the operation of the EEP, CCC will make reasonable efforts to avoid the displacement of usual marketings of U.S. agricultural commodities.

§ 1494.20 Criteria.

The criteria considered by CCC in reviewing proposals for initiatives will include, but not be limited to, the following:

(a) The expected contribution of proposed initiatives in furthering trade policy negotiations and, in particular, in furthering the U.S. trade policy negotiating strategy of countering competitors' subsidies and other unfair trade practices by displacing such countries' subsidized exports in targeted countries;

(b) The contribution which initiatives will make toward realizing U.S. agricultural export goals and, in particular, in developing, expanding, or maintaining markets for U.S. agricultural commodities;

(c) The effect that sales facilitated by initiatives would have on non-subsidizing exporters of agricultural products; and

(d) The subsidy requirements of proposed initiatives compared to the expected benefits.

Subpart B—Export Enhancement Program Operations

AUTHORITY. 15 U.S.C. 714c; 7 U.S.C. 5602, 5651, 5661, 5662, 5676.

§ 1494.101 General statement.

This subpart contains the regulations governing the operation of the Export Enhancement Program (EEP) of the Commodity Credit Corporation (CCC). CCC will, from time to time, announce, through public press release, initiatives to facilitate the export of U.S. agricultural commodities to targeted markets. The public press release, which will contain the name of a person for interested parties to contact, will be followed by the issuance of an Invitation for Offers (Invitation). Invitations will be issued pursuant to this subpart by the General Sales Manager (GSM) and will specify the eligible country(ies) (the targeted market), the unit of measure, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC bonus, the quality specifications of the eligible commodity (including possible restrictions on type, kind, grade and/or class or other quality specifications), the eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, and any other terms and conditions peculiar to that Invitation. Invitations may be one of the following two types: Those inviting exporters which have a sales contract with an eligible buyer to submit a competitive offer for a CCC Bonus; and those inviting exporters which have a sales contract with an eligible buyer to apply for an Announced CCC Bonus. After an interested person has qualified to submit an offer for an eligible commodity, the eligible exporter may submit an offer to CCC in response to an Invitation. Such offer must contain the information required by this subpart and any additional information required by the applicable Invitation. The exporter's offer will include either the Announced CCC Bonus, if applicable, or an amount in dollars and cents for a bonus deemed necessary by the exporter to make a commercial sale of the eligible commodity for export to the eligible country competitive with export sales of the commodity by other exporting countries to buyers in the eligible country. If the exporter has furnished the required performance security and the offer is acceptable to CCC, then CCC will notify the exporter that its offer has been accepted. CCC and the exporter will enter into an Agreement in which CCC will agree to pay the bonus to the exporter in return for the exporter's submission of proof that the eligible commodity has been exported from the United States and entered into the eligible country, in accordance with the terms and conditions of the Agreement.

§ 1494.201 Definitions of terms.

Terms used in this subpart, Invitations issued pursuant to this subpart, and any documents pertaining to the EEP shall have the following meaning, unless otherwise specified in such Invitations or documents:

(a) *Agreement or EEP Agreement*—The Agreement entered into between CCC and the exporter consisting of:

(1) The terms and conditions of this subpart;

(2) The terms and conditions of the applicable Invitation;

(3) The exporter's offer;

(4) CCC's acceptance of the exporter's offer; and

(5) The public press release for the Announced CCC Bonus in effect at the time of the offer, if applicable.

(b) *Announced CCC bonus*—A CCC bonus announced by CCC by public press release in connection with an Invitation which specifies that the CCC bonus amount will be pre-determined and announced by CCC.

(c) *FSA*—The Farm Service Agency, U.S. Department of Agriculture.

(d) *Bonus value*—The CCC bonus multiplied by the quantity of the eligible commodity exported pursuant to an Agreement, provided that the eligible commodity enters into the eligible country. (The bonus value is paid to

the exporter in CCC certificates or other form of payment.)

(e) *Business day*—Days during which employees of the U.S. Department of Agriculture in Washington, DC or in Kansas City, Missouri, as applicable depending upon the office to which a submission is to be made, are on official duty during normal business hours.

(f) *CCC*—The Commodity Credit Corporation, U.S. Department of Agriculture.

(g) *CCC bonus*—A dollar and cents amount, established through CCC's acceptance of the exporter's offer for such bonus amount, to be paid to the exporter for each unit of the eligible commodity exported pursuant to an Agreement, provided that the eligible commodity enters into the eligible country.

(h) *CCC Certificate*—The CCC Commodity Certificate or Certificates issued by CCC that may be transferred or exchanged for a CCC-owned commodity pursuant to CCC's regulations on Commodity Certificates, In Kind Payments, and Other Forms of Payment, currently codified at 7 CFR part 1470.

(i) *CCC Operations Division (CCCOD)*—The CCC Operations Division, FAS, U.S. Department of Agriculture.

(j) *Date of entry*—Either the date on the certificate of entry specified in § 1494.401(f)(2) indicating that the eligible commodity entered the eligible country on that date or the date that an entry document was issued by a customs port authority or other government official, whichever is later.

(k) *Date of export*—One of the following dates, depending upon the method of shipment:

(1) The on-board date shown on the export carrier's bill of lading, when the eligible commodity is shipped from the U.S. without being transshipped through a Canadian port;

(2) The on-board date at the Canadian port shown on the export carrier's bill of lading, when the eligible commodity is shipped from a Canadian transshipment port on the St. Lawrence River, provided its identity had been preserved until shipped from Canada;

(3) The on-board date shown on the export carrier's through bill of lading, when the eligible commodity is loaded to a lash barge for shipment from the U.S.; or

(4) The date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the eligible country, when the eligible commodity is shipped by rail or truck from the U.S.

(l) *Date of sale*—The earliest date the exporter has knowledge that a sales contract, as defined in paragraph (bb) of this section, exists with an eligible buyer.

(m) *Director*—The Director, Kansas City Commodity Office, FSA, U.S. Department of Agriculture, or the Director's designee.

(n) *Eligible Buyer*—Unless otherwise specified in the Invitation, a buyer, located in the eligible country, that has entered, or will enter, into a sales contract with an exporter. (The applicable Invitation may limit the eligible buyer to one or more particular buyers in an eligible country.)

(o) *Eligible country*—The country or countries, as specified in an Invitation, which will be the only country or countries into which an exported eligible commodity must ultimately be entered in order for the exporter to earn a bonus from CCC under that Invitation.

(p) *Eligible commodity*—The U.S. agricultural commodity specified as eligible for export under the applicable Invitation, which is of the kind, type, grade and/or class of commodity specified in the applicable Invitation. (If the eligible commodity is grain, it must meet the definition applicable for that grain under the U.S. Grain Standards Act and the regulations issued thereunder.)

(q) *Eligible exporter*. A person that has been notified by CCC that such person is qualified to submit offers in response to Invitations.

(r) *Export or exported*—The shipment of the eligible commodity from the United States or from the Canadian transshipment port, as permitted by this subpart, destined for the eligible country.

(s) *Exporter*—An eligible exporter that enters into an Agreement with CCC under this subpart.

(t) *Export carrier*—The carrier on which the eligible commodity is

shipped under the Agreement to the eligible country or to a port in a nearby country, if transshipments other than through Canada are allowed by the applicable Invitation. (''Export carrier'' may mean an ocean vessel and, on Canadian transshipments, will mean the ocean vessel loaded at the Canadian transshipment port; or, on overland shipments, a railcar or truck; or a container or lash barge loaded with the eligible commodity for which a through on-board bill of lading is issued for shipment to the eligible country, provided that the loaded container or lash barge is subsequently lifted aboard an ocean vessel.)

(u) *FAS*—The Foreign Agricultural Service, U.S. Department of Agriculture.

(v) *GSM*—The General Sales Manager, FAS, U.S. Department of Agriculture, acting in the capacity of Vice President, CCC, or the GSM's designee.

(w) *Invitation*—The Invitation for Offers issued by CCC pursuant to this subpart, generally specifying the eligible country, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC bonus, the quality specifications of the eligible commodity, the eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, allowances for transshipments, and any other terms and conditions particular to that Invitation. (If the Invitation contains terms or conditions that are inconsistent with this subpart, the terms and conditions of the Invitation will prevail for the purposes of Agreements entered into pursuant to such Invitation.)

(x) *Notice to exporters—EEP Contacts*—A notice issued by FAS by public press release which contains specific addresses; telephone, facsimile and telex numbers; and contacts within FAS and FSA to obtain further information concerning qualification as an eligible exporter, the submission of offers in response to Invitations, amendments to Agreements, requests for bonus payments, the submission of export and entry documentation, and other matters related to the EEP.

(y) *Official Inspection Certificate*—A valid official export inspection or other quality analysis certificate, as specified in the applicable Invitation.

(z) *Official weight certificate*—A valid official export weight or other quantity certificate, as specified in the applicable Invitation.

(aa) *Person*—An individual, partnership, corporation, association or other legal entity.

(bb) *Sales contract*—The sales contract entered into between an eligible exporter and an eligible buyer which sets forth the terms and conditions of a sale of the eligible commodity from the eligible exporter to the buyer. (Written evidence of sale may be in the form of a signed sales contract, an offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the EEP must, at a minimum, document the following information: the eligible commodity, quantity, quality specifications, delivery terms (FOB, C&F, etc.) to the eligible country, delivery period, unit price, payment terms, date of sale, and evidence of agreement between buyer and seller. A sales contract with an intervening purchaser or an affiliate or subsidiary of the eligible exporter is not an eligible sales contract for the purpose of this subpart.)

(cc) *Transshipment*—The entry of the eligible commodity into a country other than the eligible country which occurs prior to the subsequent entry of the eligible commodity into the eligible country.

(dd) *Time*—All references to time shall refer to local time in Washington, DC.

(ee) *Unit of measure*—The unit of measure for the eligible commodity, as specified in the applicable Invitation.

(ff) *United States or U.S.*—All of the 50 States, the District of Columbia, and the territories and possessions of the United States.

(gg) *U.S. agricultural commodity*. (1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

[56 FR 25011, June 3, 1991, as amended at 60 FR 21039, May 1, 1995; 62 FR 24561, May 6, 1997]

§ 1494.301 Information required for program participation.

Before CCC will consider an offer from an interested person, such person must qualify for participation in the program. Based upon information submitted by the interested person and available from public sources, CCC will determine whether the interested person is eligible for participation in the program.

(a) *Submission of documentation.* An interested person that wishes to qualify as an eligible exporter must furnish the following information or documentation to CCC at the address referenced in the Notice to Exporters--EEP Contacts:

(1) The address of the interested person's office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the interested person, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the interested person, if the interested person is a corporation;

(4) The name and address of an office(s) of the interested person within the U.S., if the interested person is a foreign corporation or other foreign entity; and

(5) A certified statement describing the interested person's participation, if any, during the past three years in U.S. Government programs, contracts or agreements.

(6) The following certification: ''I certify, to the best of my knowledge and belief, that neither [name of interested person] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. [''Principals,'' for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of interested person] will immediately notify CCC.''

(b) *Necessity to qualify.* An interested person may not submit an offer, and CCC will not consider any such offer, until CCC has notified the interested person that such person has qualified as an eligible exporter.

(c) *Additional submissions.* CCC will promptly notify interested persons that have submitted information required by this section whether they have qualified to have their offers considered. Any person failing to qualify will be notified of the basis of CCC's decision and will be given an opportunity to provide additional information for consideration by CCC.

(d) *Previous performance.* CCC may request additional information with respect to the interested person's performance under any U.S. Government programs or in connection with any contracts or agreements with the U.S. Government during the past three years.

(e) *Ineligibility for program participation.* A person may be ineligible to participate in the EEP if such person:

(1) Is currently debarred, suspended or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or

(2) Is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by a U.S. Government agency.

(f) *Duty to update information provided to CCC.* An eligible exporter is under a continuing obligation to inform CCC of any changes in the information or documentation submitted to CCC pursuant

to paragraph (a) of this section and to provide current and accurate information to CCC.

(g) *Payment of bonus to exporters without proven EEP participation*. An eligible exporter that has not yet demonstrated its ability to participate successfully in the EEP will be eligible to receive a bonus payment(s) only after the eligible commodity specified in an EEP Agreement has entered into the eligible country. Such an exporter must furnish performance security under ''Option B'' of the applicable Invitation and follow the procedure specified in §1494.701(d) to request the payment of the bonus. An eligible exporter may demonstrate its ability to participate successfully in the EEP by entering or causing to be entered into the eligible country at least 95% of the quantity of the eligible commodity specified in any one EEP Agreement. CCC will consider that an exporter has proven its ability to participate successfully in the EEP as of the date on which CCC pays to the exporter a bonus for entry of a quantity that brings the total entered quantity for any one EEP Agreement to at least 95%. For all EEP Agreements that such exporter enters into with CCC subsequent to that date, the exporter may furnish performance security under ''Option A'' of the applicable Invitation and will be eligible to receive bonus payments in accordance with §1494.701(c).

[56 FR 25011, June 3, 1991, as amended at 60 FR 21039, May 1, 1995]

§1494.401 Performance security.

(a) *Requirement to establish performance security*. Prior to the submission of an offer to CCC in response to an Invitation, an eligible exporter must establish performance security, in a form which is acceptable to CCC, in order to guarantee the eligible exporter's faithful performance of the Agreement. If CCC enters into an Agreement with the eligible exporter, this performance security must remain in effect until its cancellation or reduction is authorized by CCC pursuant to paragraph (f) of this section. An offer made by an eligible exporter will not be considered if proof of the establishment of the performance security is not made available to CCC by 3 p.m. on the date for which the offer is submitted for consideration.

(b) *Form of performance security*. The performance security must be acceptable to CCC and may be an irrevocable standby letter of credit, a bond, or a certified or cashier's check. If a standby letter of credit is furnished as performance security, the opening bank may be a U.S. bank or a foreign bank. If the standby letter of credit is opened by a foreign bank, it must be 100 percent confirmed by a U.S. bank. If a bond is furnished as performance security, the surety(ies) must be among those appearing on the list of approved sureties maintained by the U.S. Department of the Treasury. If a cashier's or certified check is furnished as performance security, the bank issuing the cashier's or certified check must be a U.S. bank.

(c) *Amount of performance security*. The amount of the performance security to be furnished to CCC in response to a particular Invitation will depend upon whether the eligible exporter intends to select ''Option A'' or ''Option B'' for the timing of the bonus payment. If the eligible exporter furnishes performance security under ''Option A'' of the applicable Invitation, the eligible exporter may request payment of the bonus after export of the eligible commodity but before entry of the commodity into the eligible country. If the eligible exporter furnishes performance security under ''Option B'' of the applicable Invitation, the eligible exporter may request payment of the bonus only after the exported eligible commodity has entered into the eligible country. The applicable Invitation will specify the exact amount of performance security for the eligible commodity required under either ''Option A'' or ''Option B'' and the method and rate for determining liquidated damages. After the exporter and CCC enter into an Agreement, the exporter may request CCC to change the performance security option for an entire Agreement from ''Option B'' to ''Option A'' and, if CCC agrees to this change, the exporter will increase the performance security amount to the level required by the applicable Invitation for ''Option A''.

(d) *Additional security*. The exporter shall promptly furnish such additional security as CCC may determine is necessary to protect CCC under an Agreement if the surety(ies) or obligating bank:

(1) Becomes unacceptable to the U.S. Government or CCC; and/or

(2) Fails to furnish reports on its financial condition as required by the U.S. Government or CCC.

(e) *Right to funds under the performance security*. If CCC enters into an Agreement with an exporter under the EEP, CCC will have the right to funds from the performance security established by the exporter for such Agreement to recover:

(1) The amount of any bonus paid to the exporter under the Agreement if the exporter fails to perform in accordance with such Agreement;

(2) Any funds owed by the exporter to CCC related to the specific EEP Agreement for which the performance security was established, including those for liquidated damages, discounts for late performance, overpayments made by CCC, storage charges, or other damages or charges as determined by CCC; and/or

(3) Any amounts or funds that could be owed by the exporter to CCC in accordance with subparagraphs (e) (1) and (2) of this section for unfulfilled obligations under the Agreement if the performance security should expire prior to the exporter's fulfillment of these obligations. Should the exporter fulfill these obligations, in accordance with the Agreement, after CCC has drawn upon the performance security, CCC will return the funds drawn to the exporter or other appropriate party, as determined by CCC. CCC may return the performance security if it determines that the exporter is not liable for any damages incurred by CCC as a result of the exporter's failure to fulfill its obligations under the Agreement and that the exporter will not retain any bonus payment which was not earned.

(f) *Cancellation or reduction of performance security*. (1) CCC will agree, upon request by the exporter, to a cancellation of the performance security established for an Agreement when CCC determines, on the basis of evidence provided by the exporter or other evidence available to CCC, that:

(i) The exporter has fully performed under the Agreement;

(ii) The exporter has fully compensated CCC for all costs incurred or damages suffered by CCC, unless CCC has determined to hold the exporter harmless for such damages pursuant to §1494.801(d) as a result of the exporter's nonperformance of the Agreement; or

(iii) It is no longer in the best interest of the EEP to require the exporter to maintain the performance security, and the exporter submits to CCC a written statement agreeing that all other terms and conditions of the Agreement will remain unchanged pending final resolution of the exporter's liabilities to CCC.

(2) To support a request for the cancellation of performance security furnished in connection with an Agreement, the exporter must provide to CCC evidence of the export of the eligible commodity as provided by §1494.701(c), and the entry of the eligible commodity into the eligible country or countries. The entry certification must be in English or accompanied by a certified or other translation acceptable to CCC. To show entry of the eligible commodity into the eligible country, the exporter must furnish to CCC an original certification signed by a duly authorized customs or port official of the eligible country, by the eligible buyer, by an agent or representative of the vessel or shipline which delivered the eligible commodity to the eligible country, or by a private surveyor in the target country or other documentation deemed acceptable by the GSM showing:

(i) That the eligible commodity entered the eligible country;

(ii) The identification of the export carrier;

(iii) The quantity of the eligible commodity unloaded;

(iv) The kind, type, grade and/or class of the eligible commodity; and

(v) The date(s) and place(s) of unloading of the eligible commodity in the eligible country.

(3) If the exporter makes multiple shipments against a sales contract with an eligible buyer, CCC may agree to a proportional reduction in the

amount of the required performance security when the exporter has furnished evidence that the exporter has performed under the Agreement with respect to a particular shipment.

(4) Upon the payment of liquidated damages by an exporter to CCC under a specific Agreement or the determination by CCC, pursuant to §1494.801(d), to hold the exporter harmless for the payment of liquidated damages owed to CCC under a specific Agreement, CCC will allow the exporter to cancel or reassign that portion of the performance security opened for such specific Agreement that would relate to the value of the liquidated damages.

§1494.501 Submission of offers to CCC.

(a) *Consideration of offers.* Unless otherwise specified in the Invitation, CCC will consider offers on a daily basis from the date of issuance of the Invitation until such time that CCC announces that offers will no longer be accepted under the Invitation, the total quantity of the eligible commodity announced in the Invitation has been awarded, or the Invitation has expired as indicated by the expiration date shown in the Invitation.

(1) Prior to the submission of an offer to CCC, the eligible exporter must have entered into a sales contract, as defined in §1494.201(bb), with an eligible buyer for the export sale and the delivery of the eligible commodity to the eligible country.

(2) The date of sale of the eligible exporter's sales contract with an eligible buyer must be after the issuance date of the applicable Invitation.

(3) The sales contract between the eligible exporter and an eligible buyer may be conditioned upon the eligible exporter's entering into an Agreement with CCC under the EEP for the payment of a bonus.

(4) CCC will not be responsible to any person for any loss caused by the failure of the eligible exporter to obtain a CCC bonus.

(5) The eligible exporter must promptly notify CCC in writing of any amendment to the sales contract with an eligible buyer.

(b) *Submission of offers.* Eligible exporters must submit offers, or modifications or withdrawals thereof, to the address, telephone, telex or facsimile numbers specified in the Notice to Exporters—Contacts for EEP. Telephonic offers must be confirmed in writing immediately thereafter by telex or facsimile. If a telephonic offer is not confirmed in writing by 9 a.m. on the next business day, the offer will not be considered. The date and time affixed to submissions will be as determined by CCC.

(c) *Content of offers.* Offers to CCC for a CCC bonus under the EEP must contain the information shown below in the same numerical order as shown below. CCC reserves the right to reject any offer that so materially departs from this prescribed format that its consideration would hinder the offer review process. The applicable Invitation may require the submission of further information necessary for the consideration of an offer.

(1) The use of the numerical designation assigned to the applicable Invitation, which shall signify that the offer is submitted subject to all the terms and conditions of this subpart and the Invitation in response to which the offer is being submitted for consideration by CCC.

(2) The date and time for which the offer is submitted for consideration. The time shall be stated as ''after 3 p.m.'' For example, the information required by paragraphs (c)(1) and (c)(2) of this section could be stated as follows: ''Invitation No. GSM–500–1, Revision No. X, For Consideration After 3 p.m. on August 1, 1991.''

(3) The full business name and address of the eligible exporter making the offer.

(4) The name and title of the individual signing the offer.

(5) The telephone number and telex or facsimile number of the eligible exporter submitting the offer.

(6) The CCC bonus in dollar and cents requested by the eligible exporter for each unit of measure of the eligible commodity to be exported to the eligible country. The offer shall contain only one CCC bonus. In offers submitted in response to an Invitation in which CCC has announced the bonus amount, the eligible exporter shall state the dollar and cents amount of the Announced CCC Bonus.

(7) The quantity, on a net weight basis, (less any dockage, if applicable) of the eligible commodity for which the eligible exporter wishes to receive a CCC bonus pursuant to an EEP Agreement. This quantity shall be exclusive of tolerances and expressed in the unit of measure specified in the applicable Invitation. This quantity may be less than the sales contract quantity.

(8) The U.S. coast of export. The Invitation may require the eligible exporter to indicate: The coasts of export if more than one coast of export is allowed for an offer; the Canadian port if the eligible commodity is to be transshipped through a Canadian port on the St. Lawrence River; or the U.S. city and state from which the shipments will cross the border into the eligible country if the eligible commodity is to be shipped by rail or truck.

(9) The quality of the eligible commodity to be exported to the eligible buyer, if required by the applicable Invitation, including any additional quality specifications not found in the Invitation but included in the tender specifications by the eligible buyer or the sales contract with the eligible buyer. The Invitation may limit an offer to one or more quality designations for the eligible commodity.

(10) The names of the eligible buyer and the eligible country. Unless otherwise provided for in the applicable Invitation, an offer shall contain only one eligible buyer and one eligible country. The Invitation may also provide that the eligible buyer need not necessarily be located in the eligible country.

(11) The date of sale of the sales contract with the eligible buyer.

(12) The number assigned by the eligible exporter to the sales contract.

(13) The quantity of the eligible commodity specified in the sales contract, expressed in the unit of measure specified in the applicable Invitation.

(14) The sales contract loading tolerance, if any, expressed in a percentage.

(15) The sales contract unit price, delivery terms (e.g., FOB, C&F, etc.); the nature of any arrangements or understandings of the eligible exporter and any other person that would affect the sales contract, including but not limited to arrangements or understandings concerning commissions, rebates, and other payments if applicable; credit payment terms (e.g., GSM–102, GSM–103, or other credit arrangements); and, if required by the applicable Invitation, the discharge port. The possible credit payment terms referenced in an offer are for CCC's information only and are not to be construed as a contingency for consideration or acceptance. The eligible exporter is fully responsible for the arrangement of such payment terms independently from the EEP offer and CCC bears no responsibility if such credit payment terms cannot be secured.

(16) The delivery period specified in the sales contract expressed on the basis of either shipment from the United States or the Canadian transshipment port or arrival in the eligible country. If an arrival period is shown, the offer must also indicate an anticipated shipment period. If a multiple month delivery schedule is agreed upon in the sales contract the offer must specify the quantity of the eligible commodity to be delivered each month or at other specified intervals.

(17) Any options which may be exercised by the eligible buyer under the sales contract. If the offer is accepted by CCC, the exporter must immediately inform CCC if any such options are exercised by the buyer.

(18) The name and address of the sales agent, if any, for the sales contract.

(19) The designation of bonus payment under ''Option A'' or ''Option B,'' as described in §1494.401(c).

(20) The words ''ALL ITEM 20 CERTIFICATIONS ARE BEING MADE IN THIS OFFER'' which, when included in the offer by the eligible exporter, will indicate that the eligible exporter is certifying that:

(i) The information furnished to CCC with respect to the sales contract is correct;

(ii) The date of sale with an eligible buyer was after the issuance date of the applicable Invitation;

(iii) The sale does not replace any sale made to the eligible buyer by the eligible exporter, or any affiliate or subsidiary of the eligible exporter,

prior to the issuance date of the applicable Invitation;

(iv) There are no other arrangements or understandings between the eligible exporter and any other person that would alter the information provided under paragraph (c) of this section;

(v) There were and will be no corrupt payments or extra sales services, or other items extraneous to the export sale provided in connection with the export sale, and the transaction complied with applicable U.S. law;

(vi) The CCC bonus requested in the offer has been arrived at independently, without any consultation, communication, or agreement with any other eligible exporter or competitor relating to:

(A) The amount of the CCC bonus;

(B) The intention to submit an offer; or

(C) The methods or factors used to calculate the CCC bonus requested;

(vii) The CCC bonus requested in the offer has not been and will not knowingly be disclosed by the eligible exporter, directly or indirectly, to any other eligible exporter or competitor before the time the offer is to be considered by CCC, unless otherwise required by law;

(viii) No attempt has been made, or will be made, by the eligible exporter to induce any other concern to submit, or not to submit, an offer for the purpose of restricting competition;

(ix) The signatory of the offer:

(A) Is the person in the eligible exporter's organization responsible for determining the CCC bonus being requested and has not participated and will not participate in any action contrary to subparagraphs (c)(20) (vi), (vii), and (viii) of this section; or

(B) Has been authorized in writing to act as agent for the eligible exporter for the purposes of paragraphs (b) and (c) of this section and certifies that the eligible exporter named in the offer and the signatory have not participated and will not participate in any action contrary to subparagraphs (c)(20) (vi), (vii), and (viii) of this section;

(x) If the eligible commodity is vegetable oil or a vegetable oil product, that none of the eligible commodity has been or will be used as the basis of a claim of a refund, as drawback, pursuant to Section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(xi) The agricultural commodity or product to be exported under an EEP Agreement is a U.S. agricultural commodity as defined by §1494.201(gg).

(xii) The eligible exporter is providing the assurances required by §§15.4 and 15b.5 of this title (7 CFR part 15 relates to various non-discrimination provisions);

(xiii) The eligible exporter still meets all of the qualification and program eligibility requirements of §1494.301 and will immediately notify CCC if there is a change of circumstances which should cause it to fail to meet such requirements; and

(xiv) The eligible exporter is providing any other certification required by the applicable Invitation.

Any eligible exporter which is unable to make the certifications specified in this subparagraph (c)(20) must provide a written statement to that effect to CCC and may include any explanation or any additional information for the consideration of CCC. CCC will reject an offer if the eligible exporter states that it is unable to provide the required certifications, unless CCC determines that acceptance of the offer would be in the best interests of the EEP.

(d) *Conditional offers.* Any qualification or condition in, or added to, the offer and not expressly authorized by this subpart or the applicable Invitation may make such offer ineligible for consideration by CCC.

(e) *CCC's right to additional information.* CCC may require the individual who signed the offer to provide documentary evidence of such individual's authority to execute an Agreement with CCC on behalf of the eligible exporter making the offer. CCC may require the eligible exporter to submit any other information which CCC deems necessary for consideration of the eligible exporter's offer. The exporter must furnish a copy of the sales contract to CCC upon request.

(f) *Considerations in making an offer.* In making an offer, the eligible exporter should take into consideration

that the exchange of CCC Certificates which may be issued as a bonus will be governed by the terms and conditions stated on the certificates and by any applicable regulations or procedures issued by or on behalf of CCC.

[56 FR 25011, June 3, 1991, as amended at 62 FR 24561, May 6, 1997]

§ 1494.601 Acceptance of offers by CCC.

(a) *Establishment of acceptable sales prices and CCC bonuses.* For each Invitation, CCC will establish sales prices for the eligible commodity and CCC bonus amounts which would be acceptable to CCC in terms of furthering the objectives of the EEP.

(1) In establishing acceptable sales prices for the eligible commodity, CCC will consider available relevant market data.

(2) In determining acceptable CCC bonus amounts, CCC may take into consideration factors such as, but not limited to, the following: The prevailing domestic market price of the eligible commodity; the price of the same agricultural commodity exported by other exporting countries to the eligible country; ocean freight rates for the export of the eligible commodity from the U.S. and other exporting countries to the eligible country; the particular preferences or purchasing practices of buyers in the eligible country which would customarily affect the acceptability of the eligible commodity relative to that of competing exports of the same agricultural commodity to the eligible country from other exporting countries; and the cost effectiveness of the payment of a CCC bonus amount in view of CCC's obligation to maximize the use of resources available for the operation of the EEP.

(3) The acceptable sales prices and bonus amounts will be modified by CCC as necessary to take advantage of updated information that becomes available to CCC.

(b) *Acceptance of offers for a CCC bonus on a competitive basis.* An offer from an eligible exporter for a CCC bonus on a competitive bonus that meets all of the requirements of this subpart will first be reviewed to determine if the offer contains an acceptable sales price. If the sales price contained in the offer is found to be acceptable, then the CCC bonus contained in the offer will be reviewed to determine if the CCC bonus requested is found to be acceptable. Offers with acceptable sales prices and acceptable CCC bonuses will be accepted under each Invitation beginning with the offer having the lowest CCC bonus amount, subject to the limitations in paragraphs (f) and (h) of this section.

(c) *Acceptance of offers for an announced CCC bonus.* Offers from eligible exporters for an Announced CCC Bonus that meet all of the requirements of this subpart and which contain an acceptable sales price will be accepted under each Invitation on a first-come, first-served basis according to the time of receipt of the offer, as determined by CCC, subject to the limitations in paragraphs (f) and (h) of this section.

(d) *Notification of acceptance of offers.* CCC will notify an eligible exporter by telephone of the acceptance or rejection of its offer as soon as possible after review of the exporter's offer by CCC but not later than 10 a.m. of the next business day after the date the offer was submitted for consideration. If an offer is rejected, CCC will notify the eligible exporter of the basis for the rejection. Acceptance of offers will be confirmed in writing. The date of the telephonic notification of acceptance by CCC of the eligible exporter's offer will be the effective date of the exporter's Agreement with CCC.

(e) *Announcement of acceptance of offers.* CCC will generally announce the acceptance of offers by public press release as soon as possible after the notification to the exporter. The announcement will generally include the eligible commodity, the eligible country, the exporter, the delivery period, the CCC bonus, and, if applicable, the class of the eligible commodity.

(f) *Limitation on acceptance of offers.* The total quantity of the eligible commodity, exclusive of tolerances, to be exported under all offers that are accepted by CCC pursuant to a particular Invitation will not be greater than the total quantity of the eligible commodity stated in such Invitation. CCC may refuse to accept further offers under an applicable Invitation if the

quantity of the eligible commodity, exclusive of tolerances, already accepted totals the quantity, exclusive of tolerances, that is being tendered for by the eligible buyer, even though such quantity may be less than the total quantity available under that Invitation.

(g) *Rejection of offers.* Any offer or part of an offer submitted for consideration that is not accepted by CCC by 10 a.m. of the next business day after the date for which the offer was submitted for consideration will be deemed to have been rejected.

(h) *CCC's right of rejection.* Notwithstanding any other provisions of this subpart, CCC reserves the right to reject any or all offers submitted for consideration on a particular day, including those offers that have acceptable sales prices and CCC bonus amounts.

§ 1494.701 Payment of bonus.

(a) *Forms of bonus.* The bonus may be paid to the exporter in CCC Certificates or in any other form specified in the applicable Invitation which CCC determines to be appropriate.

(b) *Quantity on which bonus is paid.* The quantity of the eligible commodity exported from the U.S. which is eligible for the payment of a CCC bonus is the net weight (less any dockage, if applicable) or count which is established by the Official Inspection Certificate, the Official Weight Certificate or the export bill of lading, whichever is less. If the exporter has furnished performance security under ''Option A'' of the applicable Invitation and wishes the bonus to be paid prior to the entry of the eligible commodity into the eligible country, this quantity will be used in calculating the bonus value for the purposes of making payment to the exporter. If the exporter is not paid the bonus until the commodity enters into the eligible country, then this quantity will also be used in calculating the bonus value for the purposes of making payment to the exporter, unless in the determination of CCC, there is evidence to suggest that there was destruction, diversion or loss of the eligible commodity prior to entry into the eligible country. The payment of a bonus value to an exporter does not indicate that the bonus has been earned by the exporter under the Agreement; pursuant to § 1494.801(a)(3), the bonus is not earned by the exporter until the eligible commodity enters into the eligible country in accordance with the Agreement and the exporter submits proof of such entry to CCC.

(c) *Request for bonus payment under ''Option A.''* If the exporter has furnished performance security under ''Option A'' of the applicable Invitation and wishes the bonus to be paid after export of the eligible commodity, the exporter must, within 30 calendar days after the date of export of the eligible commodity, furnish to the Director, at the address referenced in the Notice to Exporters—Contacts for EEP, a written request for payment of the bonus. All documents submitted to support such a request must be acceptable to the Director.

(1) To support each bonus payment request, the exporter must furnish to the Director the following:

(i) The original or an original copy of the on-board bill of lading issued for the export carrier and signed by an agent of the export carrier. The bill of lading must show:

(A) The identification of the export carrier;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity;

(D) An on-board date; and

(E) That the eligible commodity is destined for the eligible country.

(ii) The original or an original copy of the Official Weight Certificate, as required in the applicable Invitation. The certificate must show:

(A) The identification of the export carrier, if known at the time of issuance;

(B) The date and place of issuance; and

(C) The weight or count of the eligible commodity.

(iii) The original or an original copy of the Official Inspection Certificate, as required in the applicable Invitation. The certificate must show:

(A) The identification of the export carrier, if known at the time of issuance;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity to which the certificate relates; and

(D) The quality description of the eligible commodity.

(iv) If the documents submitted under paragraphs (c)(1)(ii) and (iii) of this section do not specify the export carrier, the exporter must also submit a signed certification that the commodity represented by the Official Inspection and/or the Official Weight certificates is the identical eligible commodity represented on the export bill of lading.

(2) If the export of the eligible commodity was by lash barge, the exporter must furnish, in addition to the documents required by paragraph (c)(1) of this section, a statement from the vessel's agent showing that the lash barge was loaded to the lash vessel named in the on-board lash bill of lading and that the eligible commodity is destined for the eligible country.

(3) If the export of the eligible commodity was from a Canadian transshipment port on the St. Lawrence River, the exporter must furnish to the Director the following, in addition to the documents required by paragraph (c)(1) of this section:

(i) Documentary evidence covering the movement of the eligible commodity from the United States to the export carrier described in the on-board bill of lading issued at the Canadian transshipment port and showing the information provided in paragraphs (c)(1) and, if applicable, (c)(2) of this section; and

(ii) A certification that the eligible commodity exported is the identical eligible commodity that was shipped from the United States.

(4) If the export of the eligible commodity was by railcar or truck, the exporter must furnish to the Director the following, in addition to the documents required by paragraphs (c)(1)(ii) and (iii) of this section:

(i) The authenticated landing certificate or similar document issued by the government of the eligible country; and

(ii) The original or an original copy of the bill of lading issued at the point of loading the railcar or truck. The bill of lading must show:

(A) The identification of the export carrier;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity;

(D) The date that the railcar or truck was loaded; and

(E) That the eligible commodity is destined for the eligible country.

(d) *Request for bonus payment under ''Option B.''* If the exporter has furnished performance security under ''Option B'' of the applicable Invitation and wishes the bonus to be paid after the entry of the exported eligible commodity into the eligible country, the exporter must, within 60 calendar days after the date of entry of the eligible commodity into the eligible country, furnish to the Director at the address referenced in the Notice to Exporters—Contracts for EEP, a written request for payment of the bonus. To support each request, the exporter must furnish to the Director, in a form acceptable to the Director, the documents specified in paragraph (c) of this section, as applicable, along with the certification of entry specified in § 1494.401(f)(2).

(e) *Time frame for payment of a bonus.* CCC will endeavor to pay the bonus to the exporter within 10 business days after CCC determines that the documents supporting the bonus request are acceptable.

(f) *Certificate amount.* If CCC decides to pay the bonus in the form of a CCC Certificate(s), the dollar value of the certificate(s) issued to the exporter will be determined by multiplying the CCC bonus specified in the Agreement by the net quantity of the eligible commodity on which the bonus is to be paid, as specified in paragraph (b) of this section, less any dockage if applicable.

(g) *Late requests for bonus payment.* If CCC decides to pay the bonus in the form of a CCC Certificate(s) and the exporter fails to request issuance of the certificate(s) within 30 calendar days after the date of export of the eligible commodity, if the exporter has chosen performance security ''Option A,'' or within 60 days after the entry of the eligible commodity into the eligible country, if the exporter has chosen performance security ''Option B'', CCC may, upon issuing the certificate(s), discount the certificate(s) in an amount determined appropriate by CCC to compensate it for costs which may

be incurred by CCC as a result of the exporter's delay.

§ 1494.801 Enforcement and termination of agreements with CCC.

(a) *Performance in accordance with an Agreement with CCC.* (1) An exporter which enters into an Agreement with CCC must ensure that the eligible commodity is exported from the U.S. and enters the eligible country in accordance with the terms and conditions of the Agreement.

(2) The diversion of the eligible commodity to a country other than the eligible country is prohibited. Transshipments of the eligible commodity are permitted only if specifically allowed in the applicable Invitation or for shipment through a Canadian transshipment port on the St. Lawrence River if the eligible commodity had been shipped from the United States via the Great Lakes coastal range and its identity had been preserved until shipped from Canada.

(3) Regardless of whether or not a bonus has been paid by CCC to the exporter pursuant to § 1494.701, the bonus is not earned by the exporter until the eligible commodity enters into the eligible country in accordance with the Agreement. In order to retain a bonus or request payment of a bonus, depending upon the option chosen for furnishing performance security, and to request cancellation of the performance security, the exporter must provide evidence to CCC, as specified in § 1494.401(f)(2), that the eligible commodity entered into the eligible country. If, on the basis of evidence available to it, CCC determines that there was destruction, diversion or loss of the eligible commodity prior to entry into the eligible country, CCC will not release the amount of performance security corresponding to the amount of eligible commodity for which insufficient evidence of entry into the eligible country was presented to CCC until:

(i) CCC recovers from the exporter the amount of the bonus corresponding to such amount of the eligible commodity, if the exporter has already been paid the bonus under performance security ''Option A''; and

(ii) The requirements of either § 1494.401(f)(1)(ii) or § 1494.401(f)(1)(iii) have been met.

(4) The failure of an exporter to perform in full and to fulfill all of its obligations under the Agreement will constitute a breach of the Agreement. An exporter which breaches the Agreement may be required to forfeit its right to receive or retain part or all of the bonus authorized or paid under the Agreement and may also be liable to CCC for damages. Examples of an exporter's failure to perform under the Agreement include, but are not limited to, the following:

(i) The exporter does not ship all of the required amount of the eligible commodity in accordance with the delivery period stated in the Agreement;

(ii) The exporter exports an amount of the eligible commodity that is inconsistent with the quality specifications in the Agreement;

(iii) The exporter is unable to provide a certification that all of the eligible commodity exported pursuant to the Agreement was entered into the eligible country;

(iv) The eligible commodity is transshipped through any country, other than Canada, unless specifically allowed in the applicable Invitation; or

(v) The eligible commodity is transshipped through Canada without having its identity preserved.

(5) If the eligible commodity is to be delivered to the eligible buyer in multiple shipments, CCC may decide to consider the shipments separately in determining whether the exporter has failed to perform under the Agreement.

(b) *Return of bonus.* An exporter that fails to fulfill all of its obligations under the Agreement shall be in default. If an exporter that has already been paid the bonus value defaults, CCC shall have the right to recover the bonus value paid for the quantity of the eligible commodity with respect to which the exporter failed to perform under the Agreement.

(1) If CCC has paid this bonus value in the form of a CCC Certificate(s), the exporter shall pay to CCC the higher of:

(i) The dollar value of the CCC Certificate(s);

(ii) The dollar amount received for the CCC Certificate(s) if the CCC Certificate(s) was transferred to another party; or

(iii) The dollar amount of the proceeds from the sale of the CCC-owned commodities exchanged for the CCC Certificate(s) if the commodities were sold to another party.

(2) If CCC has paid this bonus value in some other form, as specified in the applicable Invitation, the exporter shall pay to CCC the dollar and cents amount or equivalent of the bonus value paid to the exporter.

(c) *Liability for liquidated damages.* The exporter's failure to perform under the Agreement will cause serious and substantial losses to CCC, such as damages to the EEP and CCC's domestic price support program, storage charges, and administrative and other costs incurred. If the exporter breaches the Agreement, the exporter will be liable to pay to CCC as liquidated damages an amount obtained by applying the method or rate for determining damages specified in the applicable Invitation to the quantity of the eligible commodity with respect to which the exporter failed to perform under such Agreement. In submitting an offer in response to an Invitation issued under this subpart, the exporter agrees that such liquidated damages are reasonable estimates of the probable actual damages which may be incurred by CCC.

(d) *Decision to hold the exporter harmless for liquidated damages.* CCC will hold an exporter harmless for the payment of liquidated damages if:

(1) The exporter's failure to perform under the Agreement was due to causes solely without the exporter's fault or negligence and the exporter had taken the necessary action to enable it to export the required quantity of the eligible commodity and enter it into the eligible country; or

(2) The eligible commodity was lost or destroyed after it had been placed aboard the export carrier.

In making the decision whether to hold an exporter harmless pursuant to this paragraph, CCC may consider any information available to CCC, including any information provided to it by the exporter.

(e) *Fraud, scheme or device.* Notwithstanding any other provision of law, CCC may take action to recover any bonus paid or to hold the exporter liable for the payment of damages caused to CCC if the exporter engages in fraud with respect to the EEP, or adopts or participates in adopting a scheme or device which is designed to evade this subpart or which has the effect of evading this subpart. Such acts shall include, but are not limited to:

(1) Concealing information which is required by this subpart; or

(2) Submitting information which is known by the exporter to be false or erroneous.

(f) *CCC's right to recover amounts due CCC by exporters.* If the exporter breaches its obligations under the Agreement and becomes liable to CCC for repayment of the bonus value or for liquidated or other damages, CCC reserves the right to recover such amounts due CCC by making a claim against the performance security furnished to CCC, as described under §1494.401, or by taking any other measures available to CCC as a result of this subpart or any laws or regulations, including debt settlement regulations, applicable to CCC.

(g) *Shipping tolerances.* If the exporter exports and enters into the eligible country, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is less than the quantity specified in §1494.501(c)(7) but not less than such quantity minus 5 percent, the exporter shall not be required to pay liquidated damages for failure to perform under the Agreement for the quantity which failed to be exported and entered into the eligible country. If an exporter exports and enters into the eligible country, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is greater than the quantity specified in §1494.501(c)(7), the exporter may request payment of the bonus value based upon the actual quantity, on a net weight basis, exported and entered into the eligible country, but not greater than the quantity specified in §1494.501(c)(7), plus 5 percent.

(h) *Termination of agreements.* (1) CCC may, by written notice to the exporter,

terminate an Agreement, in whole or in part, as a result of:

(i) the failure of the exporter to carry out any provisions of the Agreement;

(ii) the failure of the exporter to maintain a business office in the U.S.;

(iii) the failure of the exporter to maintain an agent in the U.S. for service of process; or

(iv) the suspension or debarment of the exporter from participation in CCC or other U.S. Government programs.

If an Agreement is terminated by CCC pursuant to this subparagraph, CCC will not compensate the exporter for any costs incurred by the exporter. The exporter will be liable to CCC for any funds owed to CCC for the repayment of any bonus already paid and may be liable to CCC for liquidated or other damages suffered by CCC. If CCC intends to hold the exporter liable for liquidated damages, and it has not already so notified the exporter prior to the termination of the Agreement, CCC will generally do so at the time that it notifies the exporter of the termination of the Agreement.

(2) CCC may, by written notice to the exporter, terminate an Agreement, in whole or in part, if CCC determines it to be in the best interest of CCC. If an agreement is so terminated, the exporter will be compensated for reasonable losses, as determined by CCC, resulting from such termination. These losses will not include lost profits and will not exceed the bonus value under the Agreement.

(i) *Amendment of agreements*. (1) CCC will have the authority to amend an Agreement, either before or after such Agreement has been breached by the exporter, if the exporter requests that the Agreement be amended and CCC determines that such amendment would serve the best interests of the EEP. The exporter may be required to submit documentary evidence to CCC to demonstrate that it is making progress toward fulfilling the Agreement before CCC will consider amending the Agreement. All requests for amendments submitted by exporters, and all amendments made by CCC to an Agreement, under this subpart shall be in writing.

(2) Prior to amending an Agreement with the exporter, CCC will consider whether the amendment to the Agreement should include a reduction in the CCC bonus or a modification of the sales price. If CCC determines that the CCC bonus and the sales price are still acceptable, it may amend the Agreement to incorporate the exporter's requested change, while maintaining the current CCC bonus and sales price, provided that the amendment would otherwise serve the best interests of the EEP. If CCC determines that the CCC bonus and/or the sales price are no longer acceptable, due to changes in market or other conditions, it will so inform the exporter. If the exporter still requests that the Agreement be amended, CCC and the exporter will enter into discussions in an attempt to arrive at a new CCC bonus and/or sales price which would be acceptable to CCC. If these discussions are successful, then CCC may amend the Agreement to incorporate the exporter's requested change as well as the new CCC bonus and/or sales price, provided that the amendment would otherwise serve the best interests of the EEP. If these discussions are unsuccessful, then the Agreement will not be amended and the exporter will be considered to be in breach of the Agreement if it fails to perform under the terms of the Agreement.

(j) *Amendments to sales contracts*. In the event of an amendment to the sales contract between the exporter and the eligible buyer or a change in the delivery schedule, CCC will determine whether the amendment or change would constitute a breach of the Agreement. If CCC determines that the amendment or change would constitute a breach of the Agreement, CCC may terminate the Agreement. In the alternative, if CCC determines that a continuation of the Agreement would serve the best interests of the EEP, and if the exporter requests an amendment, CCC may amend the Agreement to take into account the amendment to the sales contract or change in delivery schedule. An amendment to an Agreement will be in accordance with paragraph (i)(1) of this section. CCC will promptly advise the exporter of its determination in writing by letter, facsimile, or telex.

§ 1494.901 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director of the CCC Operations Division (Director, CCCOD) and the exporter will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the EEP, this subpart, the applicable Invitation, or the Agreement.

(2) The exporter may seek reconsideration of a determination by the Director, CCCOD relating to the Agreement by submitting a letter requesting reconsideration to the Director, CCCOD, within 30 days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the exporter of the determination. The exporter may include with the letter requesting reconsideration any additional information which it wishes the Director, CCCOD, to consider in reviewing its request. The Director, CCCOD, will respond to the request for reconsideration within 30 days of the date on which the request or the final documentary evidence submitted by the exporter is received by him, whichever is later, unless the GSM extends the time permitted for response. If the exporter fails to request reconsideration of a determination by the Director, CCCOD, that the exporter owes any funds to CCC under the Agreement, then such funds will become a debt of the exporter to CCC at the expiration of the 30-day period for submitting such a request.

(3) If the exporter requested a reconsideration of a determination by the Director, CCCOD, pursuant to subparagraph (a)(2) of this section, and the Director, CCCOD, upheld the original determination, then the exporter may appeal the determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the exporter fails to appeal the determination to the GSM, then any funds owed to CCC will become a debt of the exporter to CCC at the expiration of the 30-day period for submitting an appeal to the GSM.

(b) *Appeal procedures.* (1) An exporter which has exhausted the procedures set forth in paragraph (a) of this section may appeal to the GSM a determination of the Director, CCCOD, relating to the Agreement between the exporter and CCC. An appeal to the GSM must be in writing and filed with the office of the GSM no later than 30 days following the date of the final determination by the Director, CCCOD. In this appeal to the GSM, the exporter shall be entitled to an administrative hearing before the GSM, if the exporter indicates in its appeal letter that it desires such a hearing.

(2) If the exporter does not desire an administrative hearing, the exporter may submit any additional written information or documentation which it desires the GSM to consider in acting upon its appeal. This information or documentation may be submitted to the GSM up until the time that a decision is made by the GSM. The GSM will base the determination upon information contained in the administrative record. The GSM will endeavor to make a decision on an appeal not involving a hearing within 60 days of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the exporter to the GSM, whichever is later.

(3) If the exporter has indicated that it desires an administrative hearing, the GSM will set a date and time for the hearing which is mutually convenient for the GSM and the exporter. This date will ordinarily be within 60 days of the date on which the GSM receives the request for hearing. The hearing will be an informal procedure. The exporter and/or its counsel may present any administrative or documentary evidence to the GSM which it desires to have the GSM consider in making a determination. A transcript of the hearing will not ordinarily be prepared unless the exporter bears the costs involved in preparing the transcript, although the GSM may arrange to have a transcript prepared at the expense of the Government if it is determined to be appropriate. The exporter may provide additional written information to the GSM up until the time that the GSM makes a determination. The GSM will base the determination upon the information contained in the administrative record and will endeavor to make a decision within 60 days of

the date of the hearing or the date of receipt of the transcript, if one is to be prepared, whichever is later.

(4) The decision of the GSM will be the final determination of CCC and the exporter will be entitled to no further administrative appellate rights.

(5) If the GSM upholds a determination of the Director, CCCOD, that the exporter owes any funds to CCC under the Agreement, then such funds will become a debt of the exporter to CCC.

(c) *Failure to comply with determination.* If, for any reason, the exporter has failed to pay funds to CCC which have been determined to be owed to CCC under the Agreement and the exporter has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to withdraw funds from the performance security established by the exporter or to take any other measures available to CCC as result of this subpart or any laws or regulations, including debt settlement regulations, applicable to CCC.

(d) *Exporter's obligation to perform.* The exporter will continue to have an obligation to perform under the Agreement pending the conclusion of all procedures under this section.

§ 1494.1001 Miscellaneous provisions.

(a) *Assignments.* The exporter may not assign the Agreement or any rights thereunder, including the right to receive a bonus under the Agreement.

(b) *Maintenance of records and access to premises.* (1) For a period of five years after CCC agrees to the cancellation of an exporter's performance security for an Agreement, the exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with the Agreement. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, will have full and complete access to the premises of the exporter during regular business hours from the effective date of the Agreement until the expiration of such five-year period to inspect, examine, audit and make copies of the exporter's books, records and accounts concerning transactions relating to the Agreement, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. From the effective date of the Agreement and until the expiration of such five-year period, the exporter may be required to make available to the Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the performance of an EEP Agreement.

(2) The exporter must maintain the certification of entry specified in § 1494.401(f)(2), and must provide access to such document if requested by the Secretary of Agriculture or an authorized representative, for the five-year period specified in subparagraph (b)(1) of this section.

(c) *Arrival verification reviews.* CCC will review, on an annual basis, a sufficient number of exports made in connection with EEP Agreements to ensure that the eligible commodity which was exported pursuant to each such Agreement arrived in the eligible country specified in the Agreement.

(d) *Signatory on certifications.* Any certification required from a person pursuant to this subpart or an Invitation must be signed by the person, if an individual, or by a partner or officer of the person, if the person is a partnership or a corporation, respectively.

(e) *Officials not to benefit.* No member of or Delegate to Congress, or Resident Commissioner, will participate or share in any of the benefits of any Agreement entered into pursuant to the EEP, but this provision may not be construed to extend to an Agreement made by CCC with a corporation for its general benefit.

(f) *Paperwork Reduction Act.* The information collection requirements contained in this subpart 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 0551–0028.

(g) *Waiver of irregularities.* CCC reserves the right to waive any informality or minor irregularity with respect to any aspect of the operation of the EEP or any Agreement executed thereunder in order to best accomplish the purposes of the program.

Subpart C—Dairy Export Incentive Program Criteria

AUTHORITY: 7 U.S.C. 5663.

SOURCE: 56 FR 26324, June 7, 1991, unless otherwise noted.

§ 1494.1100 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Commodity Credit Corporation's (CCC) Dairy Export Incentive Program (DEIP). These criteria are interrelated and will be considered together in order to select eligible commodities and eligible countries for DEIP initiatives which will best meet the program's objectives. The objectives of the program are to increase U.S. agricultural commodity exports and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems. Under the DEIP, bonuses are made available by CCC to enable exporters to meet prevailing world prices for targeted dairy products in targeted destinations. In the operation of the DEIP, CCC will make reasonable efforts to avoid the displacement of commercial export sales of U.S. dairy products and to ensure that sales facilitated by the DEIP are in addition to, and not in place of, any export sales of dairy products that the exporter would have otherwise made in the absence of the program.

§ 1494.1101 Criteria.

The criteria considered in evaluating and approving proposals for the DEIP are those set forth in § 1494.20 of this part.

Subpart D—Dairy Export Incentive Program Operations

AUTHORITY: 15 U.S.C. 713a–14, 714c.

SOURCE: 57 FR 45263, Oct. 1, 1992, unless otherwise noted.

§ 1494.1200 Program operations.

This subpart contains the regulations governing the operation of the Dairy Export Incentive Program (DEIP) of the Commodity Credit Corporation (CCC). Under the DEIP, CCC facilitates the export of U.S. dairy products by paying bonuses to exporters which export U.S. dairy products to targeted markets in accordance with the terms and conditions of an Agreement entered into between the exporter and CCC. Except as otherwise provided in this subpart, the program operations provisions of subpart B of this part, relating to the Export Enhancement Program, will also apply to the DEIP. Any terms or conditions applicable to a particular Invitation for Offers (Invitation) under the DEIP, beyond those terms or conditions set forth in this subpart or subpart B of this part, will be specifically provided for in such Invitation.

§ 1494.1201 Paperwork Reduction Act.

The information collection requirements contained in this subpart 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 No. 0551–0029.

PART 1495 [RESERVED]

PART 1496—PROCUREMENT OF PROCESSED AGRICULTURAL COMMODITIES FOR DONATION UNDER TITLE II, PUB. L. 480

Sec.

1496.1 General statement.
1496.2 Administration.
1496.3 Definitions.
1496.4 Issuance of invitations.
1496.5 Consideration of bids.
1496.6 Data to be used.
1496.7 Final contract determinations.

AUTHORITY: 7 U.S.C. 1721–1726a; 1731–1736g–2; 46 U.S.C. App. 1241(b), and 1241(f).

SOURCE: 44 FR 27407, May 10, 1979, unless otherwise noted.

§ 1496.1 General statement.

This subpart sets forth the policies, procedures and requirements governing procurement, including allocation to U.S. ports, of processed agricultural commodities for donation under Title II, Pub. L. 480.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5728, Feb. 25, 1987]

§ 1496.2 Administration.

(a) The program will be carried out by the Farm Service Agency (referred to in this subpart as ''FSA'') under the general supervision and direction of the Executive Vice President of CCC. The program will be administered through the Office of the Deputy Administrator, Commodity Operations, FSA, Washington, DC and the Kansas City Commodity Office (KCCO), FSA, Kansas City, Missouri. Procurement will be in accordance with USDA–1, ''General Terms and Conditions for the Procurement of Agricultural Commodities or Services'', as amended or revised, applicable provisions of the Federal Acquisition Regulations (48 CFR), and applicable purchase announcements and bid invitations.

(b) Purchases are made to fulfill commodity requests received in KCCO from AID.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5728, Feb. 25, 1987]

§ 1496.3 Definitions.

As used in the regulations in this subpart and in the forms and documents related thereto, the following terms shall have the meaning assigned to them in this section.

(a) *AID* means the Agency for International Development, an agency within the United States Department of State.

(b) *FSA* means the Farm Service Agency, an agency within the United States Department of Agriculture.

(c) *DACO* means the Deputy Administrator, Commodity Operations, FSA.

(d) *CCC* means Commodity Credit Corporation, a corporate agency within the United States Department of Agriculture.

(e) *Commodity Office* means the Kansas City Commodity Office, within FSA, which is responsible for assigned inventory management, acquisition, disposition and related program activities of CCC.

(f) *Lowest landed cost* means the lowest combined total cost of the commodity plus transportation charges to the port of discharge.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5728, Feb. 25, 1987]

§ 1496.4 Issuance of invitations.

From time to time, CCC will issue invitations to purchase or process agricultural products for utilization in the Title II, Pub. L. 480 program. The invitations will specify the contract terms; the closing date for acceptance of bids; the date contracts will be awarded; and other pertinent information. Invitations will be issued at least 10 days prior to the deadline for submission of bids. The bid submission deadlines and contract awards will be timed so not more than one market day elapses between bid opening (bid submission deadline) and contract awards.

§ 1496.5 Consideration of bids.

(a)(1) *Lowest landed cost*. The general principle of awarding contracts that will result in the lowest landed cost will prevail. Lowest landed cost will be calculated on the basis of U.S. flag rates and service for that portion of the commodities being purchased that CCC determines is necessary and practicable to meet cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being purchased. However, the additional factors set forth in this section will be considered in awarding contracts.

(b)(1) *Availability of ocean service*. Prior to receipt of offers from commodity suppliers, CCC will review ocean freight information from available sources including, but not limited to, trade journal newspapers, port publications, and steamship publications to determine the availability of appropriate ocean service.

(2) Additional information will be gathered, if necessary by direct contact with the steamship company involved, regarding such factors as the minimum tonnage and/or revenue required to perform the service needed.

(3) Special emphasis will be placed on assuring that under normal conditions the vessels will be calling at U.S. ports to coordinate loading with cargo arrival from suppliers.

(4) Freight rates will be obtained from published ocean tariffs to make cost comparisons between various steamship companies and coastal ranges.

(5) Available service will be analyzed to ensure that the port or coastal range selected for exportation has available ocean transportation service that will provide maximum compliance with the stated policy of AID with regard to the utilization of U.S. and other flag vessels to carry commodities shipped under Title II, Pub. L. 480.

(c) *Adequacy of service.* (1) Prior to the selection of a coastal range or U.S. port from which commodities will be shipped, the ocean transportation service available may be examined to determine adequacy of service. The data utilized may include, but not necessarily be limited to, the past performance of a particular vessel or steamship line in terms of loss and/or damage to cargo when received at destination port; past performance in meeting established delivery schedules, etc. CCC may eliminate from consideration ports or coastal ranges where ocean transportation service is considered inadequate by CCC. When clearly superior service is available at another port or coastal range it may be selected over other service.

(d) *Port performance.* (1) Each port will be contacted prior to bid evaluation to determine their cargo handling capabilities for Title II, Pub. L. 480, commodities when it is reasonably expected that quantities of 1,000 tons or more may be shipped. Allocations to that port will be governed by the minimum or maximum quantities indicated.

(2) Limits of quantities purchased for delivery to a port or coastal range may also be imposed by the amount of vessel space available during the expected delivery and loading period.

(3) Prior to the final selection of a U.S. port from which commodities will be shipped, the adequacy of the port to receive, accumulate, warehouse, handle, store, and protect the cargo will be considered.

(4) Factors which will be considered in this determination will include, but are not necessarily limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices.

(5) When it is determined that the U.S. port is congested, facilities are overloaded, and a vessel would not be able to dock and load cargo without delay, or when labor disputes or lack of labor will prohibit the loading of the cargo onboard a vessel in a timely manner, another coastal range or port will be considered.

(e) *Transit time.* CCC will consider total transit time, as it relates to a final delivery date, in order to satisfy program requirements.

(f) *Great Lakes ports.* (1) Commodities offered for delivery ''free alongside ship'' (f.a.s.) Great Lakes port range or intermodal bridge-port Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on that basis. Such offers will not be reevaluated on a lowest landed cost U.S.-flag basis unless CCC determines that 25 percent of the total annual tonnage of bagged, processed or fortified commodities furnished under Title II of Public Law 480 has been, or will be, transported from the Great Lakes port range during that fiscal year.

(2) CCC will consider commodity offers as offers for delivery ''intermodal bridge-port Great Lakes port range'' only if:

(i) The offer specifies delivery at a marine cargo-handling facility that is capable of loading ocean going vessels at a Great Lakes port, as well as loading ocean going conveyances such as barges and container vans, and

(ii) The commodities will be moved from one transportation conveyance to another at such a facility.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5729, Feb. 25, 1987; 63 FR 11104, Mar. 6, 1998]

§ 1496.6 Data to be used.

(a) CCC will use all available historical and current data as a basis for procurement considerations, including evaluations and decisions regarding the physical facilities and performance of ports. Heavy reliance will be placed upon current port conditions as determined from first hand observations and reports from USDA and other reliable sources.

(b) The primary source of historical data will be documents used in the normal course of conducting business. Sources include contract documents, ocean bills of lading, survey and/or outturn reports made by commercial cargo surveyors, claim settlement agreements, claim payment documents, etc. CCC will utilize only such data and make only those analyses that it believes will provide a valid measure of program performance.

§ 1496.7 Final contract determinations.

The KCCO shall be responsible for making lowest landed cost determinations. KCCO shall provide that information to an Ad Hoc Committee designated by the Administrator, FSA, to review the lowest landed cost determinations as a result of any or all of the factors referred to herein. If, after the committee makes its review and it is recommended that contracts should be awarded based on the additional factors which would override lowest landed cost determinations, these recommendations will be presented to the Contracting Officer for a final decision. These decisions will be fully documented and explained as to the reasons the lowest landed cost was not selected.

PART 1499—FOREIGN DONATION PROGRAMS

Sec.

1499.1 Definitions.
1499.2 General purpose and scope.
1499.3 Eligibility requirements for Cooperating Sponsor.
1499.4 Availability of commodities from CCC inventory.
1499.5 Program Agreements and Plans of Operation.
1499.6 Usual marketing requirements.
1499.7 Apportionment of costs and advances.
1499.8 Ocean transportation.
1499.9 Arrangements for entry and handling in the foreign country.
1499.10 Restrictions on commodity use and distribution.
1499.11 Agreement between Cooperating Sponsor and Recipient Agencies.
1499.12 Sales and barter of commodities provided and use of proceeds.
1499.13 Processing, packaging and labeling of section 416(b) commodities in the foreign country.
1499.14 Disposition of commodities unfit for authorized use.
1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.
1499.16 Records and reporting requirements.
1499.17 Audits.
1499.18 Suspension of the program.
1499.19 Sample documents and guidelines for developing proposals and reports.
1499.20 Paperwork reduction requirement.

AUTHORITY: 7 U.S.C. 1431(b); 7 U.S.C. 1736o; E.O. 12752.

SOURCE: 61 FR 60515, Nov. 29, 1996, unless otherwise noted.

§ 1499.1 Definitions.

Activity—a Cooperating Sponsor's use of agricultural commodities provided under Program Agreements or use of sale proceeds.

Agricultural Counselor or *Attache*—the United States Foreign Agricultural Service representative stationed abroad, who has been assigned responsibilities with regard to the country into which the commodities provided are imported, or such representative's designee.

CCC—the Commodity Credit Corporation.

Commodities—agricultural commodities or products.

Director, P.L. 480–OD—the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA.

Director, CCCPSD—the Director, CCC Program Support Division, Foreign Agricultural Service, USDA.

Director, PDD—the Director, Program Development Division, Foreign Agricultural Service, USDA.

Deputy Administrator—Deputy Administrator for Export Credits, Foreign Agricultural Service, USDA.

Force Majeure—damage caused by perils of the sea or other waters; collisions; wrecks; stranding without the fault of the carrier; jettison; fire from any cause; Act of God; public enemies

or pirates; arrest or restraint of princes, princesses, rulers of peoples without the fault of the carrier; wars; public disorders; captures; or detention by public authority in the interest of public safety.

General Sales Manager—General Sales Manager and Associate Administrator, Foreign Agricultural Service, USDA, who is a Vice President, CCC.

KCCO—Kansas City Commodity Office, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

KCMO/DMD—Kansas City Management Office/Debt Management Division, Farm Services Agency, USDA, P.O. Box 419205, Kansas City, Missouri, 64141–6205.

Ocean freight differential—the amount, as determined by CCC, by which the cost of ocean transportation is higher than would otherwise be the case by reason of the requirement that the commodities be transported on U.S.-flag vessels.

Program Agreement—an agreement entered into between CCC and Cooperating Sponsors.

Program income—interest on sale proceeds and money received by the Cooperating Sponsor, other than sales proceeds, as a result of carrying out approved activities.

Recipient agency—an entity located in the importing country which receives commodities or commodity sale proceeds from a Cooperating Sponsor for the purpose of implementing activities.

Sale proceeds—money received by a Cooperating Sponsor from the sale of commodities.

Section 416(b)—Section 416(b) of the Agricultural Act of 1949.

USDA—the United States Department of Agriculture.

[61 FR 60515, Nov. 29, 1996; 62 FR 2719, Jan. 17, 1997, as amended at 63 FR 59877, Nov. 6, 1998]

§ 1499.2 General purpose and scope.

This part establishes the general terms and conditions governing CCC's donation of commodities to Cooperating Sponsors under the section 416(b) and Food for Progress programs. This does not apply to donations to intergovernmental agencies or organizations (such as the World Food Program) unless CCC and such intergovernmental agency or organization enters into an agreement incorporating this part.

§ 1499.3 Eligibility requirements for Cooperating Sponsor.

A Cooperating Sponsor may be either:

(a) A foreign government;

(b) An entity registered with the Agency for International Development (AID) in accordance with AID regulations; or

(c) An entity that demonstrates to CCC's satisfaction:

(1) Organizational experience and resources available to implement and manage the type of program proposed, *i.e.*, targeted food assistance or sale of commodities for economic development activities;

(2) Experience working in the targeted country; and

(3) Experience and knowledge on the part of personnel who will be responsible for implementing and managing the program. CCC may require that an entity submit a financial statement demonstrating that it has the financial means to implement an effective donation program.

§ 1499.4 Availability of commodities from CCC inventory.

CCC will periodically announce the types and quantities of agricultural commodities available for donation from CCC inventory for the section 416(b) program.

§ 1499.5 Program Agreements and Plans of Operation.

(a) *Plan of Operation*. (1) Prior to entering into a section 416(b) Program Agreement, a Cooperating Sponsor shall submit a Plan of Operation to the Director, PDD and to the Agricultural Counselor or Attache, if an Agricultural Counselor or Attache is resident in the country where activities are to be implemented. After approval by CCC, the Plan of Operation will be incorporated into the section 416(b) Program Agreement as ''Attachment A.''

(2) CCC may require Cooperating Sponsors to submit a Plan of Operation in connection with the Food for Progress program.

(3) A Plan of Operation shall be in the following format and provide the following information:

1. Name and Address of Applicant:
2. Country of Donation:
3. Kind and Quantity of Commodities Requested:
4. Delivery Schedule:
5. Program Description:
Provide the following information:
(a) Activity objectives, including a description of any problems anticipated in achieving the activities' objectives;
(b) Method for choosing beneficiaries of activities;
(c) Program administration including, as appropriate, plans for administering the distribution or sale of commodities and the expenditure of sale proceeds, and identification of the administrative or technical personnel who will implement the activities;
(d) Activity budgets, including costs that will be borne by the Cooperating Sponsor, other organizations or local governments;
(e) The recipient agency, if any, that will be involved in the program and a description of each recipient agency's capability to perform its responsibilities as stated in the Plan of Operation;
(f) Governmental or nongovernmental entities involved in the program and the extent to which the program will strengthen or increase the capabilities of such entities to further economic development in the recipient country;
(g) Method of educating consumers as to the source of the provided commodities and, where appropriate, preparation and use of the commodity; and
(h) Criteria for measuring progress towards achieving the objectives of activities and evaluating program outcome.
6. Use of Funds or Goods and Services Generated:
When the activity involves the use of sale proceeds, the receipt of goods or services from the barter of commodities, or the use of program income, the following information must be provided:
(a) the quantity and type of commodities to be sold or bartered;
(b) extent to which any sale or barter of the agricultural commodities provided would displace or interfere with any sales that may otherwise be made;
(c) the amount of sale proceeds anticipated to be generated from the sale, the value of the goods or services anticipated to be generated from the barter of the agricultural commodities provided, or the amount of program income expected to be generated;
(d) the steps taken to use, to the extent possible, the private sector in the process of selling commodities;
(e) the specific uses of sale proceeds or program income and a timetable for their expenditure; and
(f) procedures for assuring the receipt and deposit of sale proceeds and program income into a separate special account and procedures for the disbursement of the proceeds and program income from such special account.
7. Distribution Methods:
(a) a description of the transportation and storage system which will be used to move the agricultural commodities from the receiving port to the point at which distribution is made to the recipient;
(b) a description of any reprocessing or repackaging of the commodities that will take place; and
(c) a logistics plan that demonstrates the adequacy of port, transportation, storage, and warehouse facilities to handle the flow of commodities to recipients without undue spoilage or waste.
8. Duty Free Entry:
Documentation indicating that any commodities to be distributed to recipients, rather than sold, will be imported and distributed free from all customs, duties, tolls, and taxes.
9. Economic Impact:
Information indicating that the commodities can be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products within the importing country.

(b) *Agreements*. CCC and the Cooperating Sponsor will enter into a written Program Agreement which will incorporate the terms and conditions set forth in this part. The commodities provided by CCC, and any packaging, will meet the specifications set forth in such Program Agreement. A Program Agreement may contain special terms or conditions, in addition to or in lieu of, the terms and conditions set forth in the regulations in this part when CCC determines that such special terms or conditions are necessary to effectively carry out the particular Program Agreement.

§ 1499.6 Usual marketing requirements.

(a) A foreign government Cooperating Sponsor shall provide to the Director, PDD, data showing commercial and non-commercial imports of the types of agricultural commodities requested during the prior five years, by country of origin, and an estimate of imports of such commodities during the current year.

(b) CCC may require that a Program Agreement with a foreign government include a ''usual marketing requirement'' that establishes a specific level of imports for a specified period. The Program Agreement may also include a prohibition on the export of provided commodities, as well as of other similar commodities specified in the Program Agreement.

§ 1499.7 Apportionment of costs and advances.

(a) CCC will bear the costs of processing, packaging, transportation, handling and other incidental charges incurred in delivering commodities to Cooperating Sponsors. CCC will deliver bulk grain shipments f.o.b. vessel, and shipments of all other commodities f.a.s. vessel or intermodal points. CCC will choose the point of delivery based on lowest cost to CCC.

(b) When the General Sales Manager approves in advance and in writing, CCC may agree to bear all or a portion of reasonable costs associated with:

(1) Transportation from U.S. ports to designated ports or points of entry abroad, maritime survey costs, and in cases of urgent and extraordinary relief requirements, transportation from designated ports or points of entry abroad to designated storage and distribution sites;

(2) In cases of urgent and extraordinary relief requirements, reasonable storage and distribution costs; and

(3) Under the Food for Progress Program, administration or monitoring of food assistance programs, or technical assistance regarding sales of commodities provided by CCC.

(c) CCC will not pay any costs incurred by the Cooperating Sponsor prior to the date of the Program Agreement.

(d) Except as provided in paragraph (b) of this section, the Cooperating Sponsor shall ordinarily bear all costs incurred subsequent to CCC's delivery of commodities at U.S. ports or intermodal points.

(e) A Cooperating Sponsor seeking agreement by CCC to bear the costs identified in paragraphs (b)(2) or (b)(3) of this section shall submit to the Director, PDD, a Program Operation Budget detailing such costs. If approved, the Program Operation Budget shall become part of the Program Agreement. The non-government Cooperating Sponsor may make adjustments between line items of an approved Program Operations Budget up to 20 percent of the total amount approved or $5,000, whichever is less without any further approval. Adjustments beyond these limits must be specifically approved by the Director, PDD.

(f) The Cooperating Sponsor may request advance of up to 85 percent of the amount of an approved Program Operating Budget. However, CCC will not approve any request for an advance received earlier than 60 days after the date of a previous advance made in connection with the same Program Agreement.

(g) Funds advanced shall be deposited in an interest bearing account until expended. Interest earned may be used only for the purposes for which the funds were advanced.

(h) The Cooperating Sponsor shall return to CCC any funds not obligated as of the 180th day after being advanced, together with any interest earned on such unexpended funds. Funds and interest shall be returned within 30 days of such date.

(i) The Cooperating Sponsor shall, not later than 10 days after the end of each calendar quarter, submit a financial statement to the Director, PDD, accounting for all funds advanced and all interest earned.

(j) CCC will pay all other costs for which it is obligated under the Program Agreement by reimbursement. However, CCC will not pay any cost incurred after the final date specified in the Program Agreement.

[61 FR 60515, Nov. 29, 1996, as amended at 63 FR 59877, Nov. 6, 1998]

§ 1499.8 Ocean transportation.

(a) *Cargo preference*. Shipments of commodities provided under either the section 416(b) or Food for Progress programs are subject to the requirements of sections 901(b) and 901b of the Merchant Marine Act, 1936, regarding carriage on U.S.-flag vessels. CCC will endeavor to meet these requirements separately for each program for each 12-month compliance period. A Cooperating Sponsor shall comply with the

instructions of CCC regarding the quantity of commodities that must be carried on U.S. flag vessels.

(b) *Freight procurement requirements.* When CCC is financing any portion of the ocean freight, whether on U.S.-flag or non-U.S. flag vessels, and the Cooperating Sponsor arranges ocean transportation:

(1) The Cooperating Sponsor shall arrange ocean transportation through competitive bidding and shall obtain approval of all invitations for bids from the offices specified in the Program Agreement prior to issuance.

(2) Invitations for bids shall be issued through the Transportation News Ticker (TNT), New York, and at least one other comparable means of trade communication.

(3) Freight invitations for bids shall include specified procedures for payment of freight, including the party responsible for the freight payments, and expressly require that:

(i) Offers include a contract canceling date no later than the last contract layday specified in the invitation for bids;

(ii) Offered rates be quoted in U.S. dollars per metric ton;

(iii) If destination bagging or transportation to a point beyond the discharge port is required, the offer separately state the total rate and the portion thereof attributable to the ocean segment of the movement;

(iv) Any non-liner U.S. flag vessel 15 years or older offer, in addition to any other offered rate, a one-way rate applicable in the event the vessel is scrapped or transferred to foreign flag registry prior to the end of the return voyage to the United States;

(v) In the case of packaged commodities, U.S. flag carriers specify whether delivery will be direct breakbulk shipment, container shipment, or breakbulk transshipment and identify whether transshipment (including container relays) will be via U.S. or foreign flag vessel;

(vi) Vessels offered subject to Maritime Administration approval will not be accepted; and

(vii) Offers be received by a specified closing time, which must be the same for both U.S. and non-U.S. flag vessels.

(4) In the case of shipments of bulk commodities and non-liner shipments of packaged commodities, the Cooperating Sponsor shall open offers in public in the United States at the time and place specified in the invitation for bids and consider only offers that are responsive to the invitation for bids without negotiation. Late offers shall not be considered or accepted.

(5) All responsive offers received for both U.S. flag and foreign flag service shall be presented to KCCO which will determine the extent to which U.S.-flag vessels will be used.

(6) The Cooperating Sponsor shall promptly furnish the Director, Public Law 480–OD, or other official specified in the Program Agreement, copies of all offers received with the time of receipt indicated thereon. The Director, Public Law 480–OD, or other official specified in the Program Agreement, will approve all vessel fixtures. The Cooperating Sponsor may fix vessels subject to the required approval; however, the Cooperating Sponsor shall not confirm a vessel fixture until advised of the required approval and the results of the Maritime Administration's guideline rate review. The Cooperating Sponsor shall not request guideline rate advice from the Maritime Administration. The Cooperating Sponsor will, promptly after receipt of vessel approval, issue a public notice of the fixture details on the TNT or other means of communication approved by the Director, Public Law 480–OD.

(7) Non-Vessel Operating Common Carriers may not be employed to carry shipments on either U.S. or foreign-flag vessels.

(8) The Cooperating Sponsor shall promptly furnish the Director Public Law 480–OD, a copy of the signed laytime statement and statement of facts at the discharge port.

(c) *Shipping agents.* (1) The Cooperating Sponsor may appoint a shipping agent to assist in the procurement of ocean transportation. The Cooperating Sponsor shall nominate the shipping agent in writing to the Deputy Administrator, Room 4077–S, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1031, and include a copy of the proposed agency agreement. The Cooperating Sponsor

shall specify the time period of the nomination.

(2) The shipping agent so nominated shall submit the information and certifications required by 7 CFR 17.4 to the Deputy Administrator.

(3) A person may not act as a shipping agent for a Cooperating Sponsor unless the Deputy Administrator has notified the Cooperating Sponsor in writing that the nomination is accepted.

(d) *Commissions.* (1) When any portion of the ocean freight is paid by CCC, total commissions earned on U.S. and foreign flag bookings by all parties arranging vessel fixtures, shall not exceed 2½ percent of the total freight costs.

(2) Address commissions are prohibited.

(e) *Contract terms.* When CCC is paying any portion of the ocean freight, charter parties and liner booking contracts must conform to the following requirements, as applicable:

(1) Packaged commodities on liner vessels shall be shipped on the basis of full berth terms with no demurrage or despatch;

(2) Shipments of bulk liquid commodities may be contracted in accordance with trade custom. Other bulk commodities, including shipments that require bagging or stacking for the account of the vessel, shall be shipped on the basis of vessel load, free out, with demurrage and despatch applicable at load and discharge ports; except that, if bulk commodities require further inland distribution, they shall be shipped on the basis of vessel load with demurrage and despatch at load and berth terms discharge, *i.e.*, no demurrage, despatch, or detention at discharge. Demurrage and despatch shall be settled between the ocean carrier and commodity suppliers at load port and between the ocean carrier and charterers at discharge ports. CCC is not responsible for resolving disputes involving the calculation of laytime or the payment of demurrage or despatch.

(3) If the Program Agreement requires the Cooperating Sponsor to arrange an irrevocable letter of credit for ocean freight, the Cooperating Sponsor shall be liable for detention of the vessel for loading delays attributable solely to the decision of the ocean carrier not to commence loading because of the failure of the Cooperating Sponsor to establish such letter of credit. Charter parties and liner booking contracts may not contain a specified detention rate. The ocean carrier shall be entitled to reimbursement, as damages for detention for all time so lost, for each calendar day or any part of the calendar day, including Saturdays, Sundays and holidays. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the charter party or liner booking contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable charter party or liner booking contract. The period of such delay shall end at the time that operable irrevocable letters of credit have been established for ocean freight or the time the vessel begins loading, whichever is earlier. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(4) Charges including, but not limited to charges for inspection, fumigation, and carrying charges, attributable to the failure of the vessel to present before the canceling date will be for the account of the ocean carrier.

(5) Ocean freight is earned under a charter party when the vessel and cargo arrive at the first port of discharge, *Provided,* That if a *force majeure* prevents the vessel's arrival at the first port of discharge, 100% of the ocean freight is payable or, if the charter party provides for completing additional requirements after discharge such as bagging, stacking, or inland transportation, not more than 85% of the ocean freight is payable, at the time the General Sales Manager determines that such *force majeure* was the cause of nonarrival; and

(6) When the ocean carrier offers delivery to destination ports on U.S.-flag vessels, but foreign-flag vessels are used for any part of the voyage to the destination port without first obtaining the approval of the Cooperating Sponsor, KCCO, and any other approval

that may be required by the Program Agreement, the ocean freight rate will be reduced to the lowest responsive foreign-flag vessel rate offered in response to the same invitation for bids and the carrier agrees to pay CCC the difference between the contracted ocean freight rate and the freight rate offered by such foreign-flag vessel.

(f) *Coordination between CCC and the Cooperating Sponsor*. When a Program Agreement specifies that the Cooperating Sponsor will arrange ocean transportation:

(1) KCCO will furnish the Cooperating Sponsor, or its agent, with a Notice of Commodity Availability (Form CCC–512) which will specify the receiving country, commodity, quantity, and date at U.S. port or intermodal delivery point.

(2) The Cooperating Sponsor shall complete the Form CCC–512 indicating name of steamship company, vessel name, vessel flag and estimated time of arrival at U.S. port; and shall sign and return the completed form to KCCO, with a copy to the Director, P.L. 480–OD. If CCC agrees to pay any part of the ocean transportation for liner cargoes, the Cooperating Sponsor shall also indicate on the Form CCC–512 the applicable Federal Maritime Commission tariff rate, and tariff identification.

(3) KCCO will issue instructions to have the commodity delivered f.a.s. or f.o.b. vessel, U.S. port of export or intermodal delivery point, consigned to the Cooperating Sponsor.

(g) *Documents required for payment of freight*—(1) *General rule*. To receive payment for ocean freight, the following documents shall be submitted to the Director, CCCPSD:

(i) One signed copy of completed Form CCC–512;

(ii) Four copies of the original onboard bills of lading indicating the freight rate and signed by the originating carrier;

(iii) For all non-containerized grain cargoes,

(A) One signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

(B) One signed copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and

(C) One signed copy of the National Cargo Bureau Certificate of Loading;

(iv) For all containerized grain and grain product cargoes, one signed copy of the FGIS Container Condition Inspection Certificate;

(v) One signed copy of liner booking note or charter party covering ocean transportation of cargo;

(vi) For charter shipments, a signed notice of arrival at first discharge port submitted by the Cooperating Sponsor;

(vii) For all liner cargoes, a copy of the tariff page.

(viii) Four copies of either:

(A) A request by the Cooperating Sponsor for reimbursement of ocean freight or ocean freight differential indicating the amount due, and accompanied by a certification from the ocean carrier that payment has been received from the Cooperating Sponsor; or

(B) A request for direct payment to the ocean carrier, indicating amount due; or

(C) A request for direct payment of ocean freight differential to the ocean carrier accompanied by a certification from the carrier that payment of the Cooperating Sponsor's portion of the ocean freight has been received.

(ix) Each request to CCC for payment must provide a document, on letterhead and signed by an official or agent of the requester, the name of the entity to receive payment, the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the requester's taxpayer identification number; and the type of the account into which funds will be deposited.

(2) *In cases of force majeure*. To receive payment in cases where the General Sales Manager determines that circumstances of *force majeure* have prevented the vessel's arrival at the first port of discharge, the Cooperating Sponsor shall submit all documents required by paragraph (g)(1) of this section except for the notice of arrival required by paragraph (g)(1)(vi) of this section.

(h) *CCC payment of ocean freight or ocean freight differential*—(1) *General rule*. CCC will pay, not later than 30

days after receipt in good order of the required documentation, 100 percent of either the ocean freight or the ocean freight differential, whichever is specified in the Program Agreement.

(2) *Additional requirements after discharge*. Where the charter party or liner booking note provide for the completion of additional services after discharge, such as bagging, stacking or inland transportation, CCC will pay, not later than 30 days after receipt in good order of the required documentation, either not more than 85 percent of the total freight charges or 100 percent of the ocean freight differential, whichever is specified in the Program Agreement. CCC will pay the remaining balance, if any, of the freight charges not later than 30 days after receipt of notification from the Cooperating Sponsor that such additional services have been provided; except that CCC will not pay any remaining balance where the GSM determines that the vessel's arrival at first port of discharge was prevented by *force majeure*.

(3) *No demurrage*. CCC will not pay demurrage.

[61 FR 60515, Nov. 29, 1996; 62 FR 2719, Jan. 17, 1997, as amended at 63 FR 8837, Feb. 23, 1998; 63 FR 59877, Nov. 6, 1998]

§ 1499.9 Arrangements for entry and handling in the foreign country.

(a) The Cooperating Sponsor shall make all necessary arrangements for receiving the commodities in the recipient country, including obtaining appropriate approvals for entry and transit. The Cooperating Sponsor shall store and maintain the commodities from time of delivery at port of entry or point of receipt from originating carrier in good condition until their distribution, sale or barter.

(b) When CCC has agreed to pay costs of transporting, storing, and distributing commodities from designated points of entry or ports of entry, the Cooperating Sponsor shall arrange for such services, by through bill of lading, or by contracting directly with suppliers of services, as CCC may approve. If the Cooperating Sponsor contracts directly with the suppliers of such services, the Cooperating Sponsor may seek reimbursement by submitting documentation to CCC indicating actual costs incurred. All supporting documentation must be sent to the Director, CCCPSD. CCC, at its option, will reimburse the Cooperating Sponsor for the cost of such services in U.S. dollars at the exchange rate in effect on the date of payment by CCC, or in foreign currency.

[61 FR 60515, Nov. 29, 1996; 62 FR 2719, Jan. 17, 1997]

§ 1499.10 Restrictions on commodity use and distribution.

(a) The Cooperating Sponsor may use the commodities provided only in accordance with the terms of the Program Agreement.

(b) Commodities shall not be distributed within the importing country on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliations of the potential consumers or recipients.

(c) Commodities shall not be distributed, handled or allocated by military forces without specific CCC authorization.

(d) In the event that its participation in the program terminates, the nongovernment cooperating sponsor will safeguard any undistributed commodities and sales proceeds and dispose of such commodities and proceeds as directed by CCC.

[61 FR 60515, Nov. 29, 1996, as amended at 63 FR 59877, Nov. 6, 1998]

§ 1499.11 Agreement between Cooperating Sponsor and recipient agencies.

(a) The Cooperating Sponsor shall enter into a written agreement with a recipient agency prior to the transfer of any commodities, sale proceeds or program income to the recipient agency. Copies of such agreements shall be provided to the Agricultural Counselor or Attache, and the Director, PDD. Such agreements shall require the recipient agency to pay the Cooperating Sponsor the value of any commodities, sale proceeds or program income that are used for purposes not expressly permitted under the Program Agreement, or that are lost, damaged, or misused as result of the recipient agency's failure to exercise reasonable care;

(b) CCC may waive the requirements of paragraph (a) of this section where it

determines that such an agreement is not feasible or appropriate.

§ 1499.12 Sales and barter of commodities provided and use of proceeds.

(a) Commodities may be sold or bartered without the prior approval of CCC where damage has rendered the commodities unfit for intended program purposes and sale or barter is necessary to mitigate loss of value.

(b) A Cooperating Sponsor may, but is not required to, negotiate an agreement with the host government under which the commodities imported for a sale or barter may be imported, sold, or bartered without assessment of duties or taxes. In such cases and where the commodities are sold, they shall be sold at prices reflecting prevailing local market value.

(c) The Cooperating Sponsor shall deposit all sale proceeds into an interest-bearing account unless prohibited by the laws or customs of the importing country or CCC determines that to do so would constitute an undue burden. Interest earned on such deposits shall only be used for approved activities.

(d) Except as otherwise provided in this part, the Cooperating Sponsor may use sale proceeds and resulting interest only for those purposes approved in the applicable Plan of Operation.

(e) CCC will approve the use of sale proceeds and interest to purchase real and personal property where local law permits the Cooperating Sponsor to retain title to such property, but will not approve the use of sale proceeds or interest to pay for the acquisition, development, construction, alteration or upgrade of real property that is;

(1) Owned or managed by a church or other organization engaged exclusively in religious activity, or

(2) Used in whole or in part for sectarian purposes; *except that*, a Cooperating Sponsor may use such sale proceeds or interest to pay for repairs or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of provided commodities but only if such structure is not used in whole or in part for any religious or sectarian purposes while the provided commodities are stored in such structure. When not approved in the Plan of Operation, such use may be approved by the Agricultural Counsellor or Attache.

(f) The Cooperating Sponsor shall follow commercially reasonable practices in procuring goods and services and when engaging in construction activity in accordance with the approved Plan of Operation. Such practices shall include procedures to prevent fraud, self-dealing and conflicts of interest, and shall foster free and open competition to the maximum extent practicable.

(g) To the extent required by the Program Agreement, the Cooperating Sponsor shall submit to the Controller, CCC, and to the Director, PDD, an inventory of all assets acquired with sale proceeds or interest or program income. In the event that its participation in the program terminates, the Cooperating Sponsor shall dispose, at the direction of the Director, PDD, of any property, real or personal, so acquired.

[61 FR 60515, Nov. 29, 1996; 62 FR 2719, Jan. 17, 1997]

§ 1499.13 Processing, packaging and labeling of section 416(b) commodities in the foreign country.

(a) Cooperating Sponsors may arrange for the processing of commodities provided under a section 416(b) Program Agreement, or for packaging or repackaging prior to distribution. When a third party provides such processing, packaging or repackaging, the Cooperating Sponsor shall enter into a written agreement requiring that the provider of such services maintain adequate records to account for all commodities delivered and submit periodic reports to the Cooperating Sponsor. The Cooperating Sponsor shall submit a copy of the executed agreement to the Agricultural Counselor or Attache.

(b) If, prior to distribution, the Cooperating Sponsor arranges for packaging or repackaging commodities provided under section 416(b), the packaging shall be plainly labeled in the language of the country in which the commodities are to be distributed with the name of the commodity and, except where the commodities are to be sold or bartered after processing, packaging or repackaging, to indicate that the commodity is furnished by the people of the United States of America and

not to be sold or exchanged. If the commodities are not packaged, the Cooperating Sponsor shall, to the extent practicable, display banners, posters or other media containing the information prescribed in this paragraph.

(c) CCC will reimburse Cooperating Sponsors that are nonprofit private voluntary organizations or cooperatives for expenses incurred for repackaging if the packages of commodities provided under section 416(b) are discharged from the vessel in damaged condition, and are repackaged to ensure that the commodities arrive at the distribution point in wholesome condition. No prior approval is required for such expenses equaling $500 or less. If such expense is estimated to exceed $500, the authority to repackage and incur such expense must be approved by the Agricultural Counselor or Attache in advance of repackaging.

§ 1499.14 Disposition of commodities unfit for authorized use.

(a) *Prior to delivery to Cooperating Sponsor at discharge port or point of entry*. If the commodity is damaged prior to delivery to a governmental Cooperating Sponsor at discharge port or point of entry overseas, the Agricultural Counselor or Attache will immediately arrange for inspection by a public health official or other competent authority. If the commodity is damaged prior to delivery to a nongovernmental Cooperating Sponsor at the discharge port or point of entry, the nongovernmental Cooperating Sponsor shall arrange for such inspection. If inspection discloses the commodity to be unfit for the use authorized in the Program Agreement, the Agricultural Counselor or Attache or the nongovernmental Cooperating Sponsor shall dispose of the commodities in accordance with the priority set forth in paragraph (b) of this section. Expenses incidental to the handling and disposition of the damaged commodity will be paid by CCC from the sale proceeds or from an appropriate CCC account designated by CCC. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer, American Embassy, for the credit of CCC in an appropriate CCC account designated by CCC; however, if the commodities are provided for a sales program, the net sale proceeds, net of expenses incidental to handling and disposition of the damaged commodity, shall be deposited to the special account established for sale proceeds. The Cooperating Sponsor shall consult with CCC regarding the inspection and disposition of commodities and accounting for sale proceeds in the event the Cooperating Sponsor executed a sales agreement under which title passed to the purchaser prior to delivery to the Cooperating Sponsor.

(b) *After delivery to Cooperating Sponsor*. (1) If after arrival in a foreign country and after delivery to a Cooperating Sponsor, it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Program Agreement, the Cooperating Sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by the Agricultural Counselor or Attache. If no competent local authority is available, the Agricultural Counselor or Attache may determine whether the commodities are unfit for the use authorized in the Program Agreement and, if so, may direct disposal in accordance with this paragraph (b) of this section. The Cooperating Sponsor shall arrange for the recovery of that portion of the commodities designated during the inspection as suitable for authorized use. If, upon inspection, the commodity (or any part thereof) is determined to be unfit for the authorized use, the Cooperating Sponsor shall notify the Agricultural Counselor or Attache of the circumstances pertaining to the loss or damage. With the concurrence of the Agricultural Counselor or Attache, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(i) By transfer to an approved section 416(b) program for use as livestock feed. CCC shall be advised promptly of any such transfer so that shipments from the United States to the livestock feeding program can be reduced by an equivalent amount;

(ii) Sale for the most appropriate use, i.e., animal feed, fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold, all

U.S. Government markings shall be obliterated or removed;

(iii) By donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iv) If the commodity is unfit for any use or if disposal in accordance with paragraph (b)(1) (i), (ii) or (iii) of this section is not possible, the commodity shall be destroyed under the observation of a representative of the Agricultural Counselor or Attache, if practicable, in such manner as to prevent its use for any purpose.

(2) Actual expenses incurred, including third party costs, in effecting any sale may be deducted from the sale proceeds and, if the commodities were intended for direct distribution, the Cooperating Sponsor shall deposit the net proceeds with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to an appropriate CCC account as designated by CCC. If the commodities were intended to be sold, the Cooperating Sponsor shall deposit the gross proceeds into the special interest bearing account and, after approved costs related to the handling and disposition of damaged commodities are paid, shall use the remaining funds for purposes of the approved program. The Cooperating Sponsor shall promptly furnish to the Agricultural Counselor or Attache a written report of all circumstances relating to the loss and damage on any commodity loss in excess of $5,000; quarterly reports shall be made on all other losses. If the commodity was inspected by a public health official or other competent authority, the report and any supplemental report shall include a certification by such public health official or other competent authority as to the condition of the commodity and the exact quantity of the damaged commodity disposed. Such certification shall be obtained as soon as possible after the discharge of the cargo. A report must also be provided to the Chief, Debt Management Division, KCMO/DMD, of action taken to dispose of commodities unfit for authorized use.

[61 FR 60515, Nov. 29, 1996, as amended at 63 FR 59877, Nov. 6, 1998]

§ 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

(a) *Fault of Cooperating Sponsor prior to loading on ocean vessel.* The Cooperating Sponsor shall immediately notify KCCO, Chief, Export Operations Division if the Cooperating Sponsor will not have a vessel for loading at the U.S. port of export in accordance with the agreed shipping schedule. CCC will determine whether the commodity will be: moved to another available outlet; stored at the port for delivery to the Cooperating Sponsor when a vessel is available for loading; or disposed of as CCC may deem proper. The Cooperating Sponsor shall take such action as directed by CCC and shall reimburse CCC for expenses incurred if CCC determines that the expenses were incurred because of the fault or negligence of the Cooperating Sponsor.

(b) *Fault of others prior to loading on ocean vessel.* The Cooperating Sponsor shall immediately notify the Chief, Debt Management Office, KCMO/DMD, when any damage or loss to the commodity occurs that is attributable to a warehouseman, carrier, or other person between the time title is transferred to a Cooperating Sponsor and the time the commodity is loaded on board vessel at the designated port of export. The Cooperating Sponsor shall promptly assign to CCC any rights to claims which may arise as a result of such loss or damage and shall promptly forward to CCC all documents pertaining thereto. CCC shall have the right to initiate claims, and retain the proceeds of all claims, for such loss or damage.

(c) *Survey and outturn reports related to claims against ocean carriers.* (1) If the Program Agreement provides that CCC will arrange for an independent cargo surveyor to attend the discharge of the cargo, CCC will require the surveyor to provide a copy of the report to the Cooperating Sponsor.

(2)(i) If the Cooperating Sponsor arranges for an independent cargo surveyor, the Cooperating Sponsor shall forward to the Chief, Debt Management Office, KCMO/DMD, any narrative chronology or other commentary it can provide to assist in the adjudication of ocean transportation claims and shall prepare such a narrative in any case

where the loss is estimated to be in excess of $5,000.00. The Cooperating Sponsor may, at its option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the Cooperating Sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss and damage, the Cooperating Sponsor shall provide to the Chief, Debt Management Office, KCMO/DMD, the names and addresses of individuals who were present at the time of discharge and during survey and who can verify the quantity lost or damaged. For bulk grain shipments, in those cases where the Cooperating Sponsor is responsible for survey and outturn reports, the Cooperating Sponsor shall obtain the services of an independent surveyor to:

(A) Observe the discharge of the cargo;

(B) Report on discharging methods including scale type, calibrations and any other factor which may affect the accuracy of scale weights, and, if scales are not used, state the reason therefore and describe the actual method used to determine weights;

(C) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(D) Advise on the quality of sweepings;

(E) Obtain copies of port or vessel records, if possible, showing quantity discharged;

(F) Provide immediate notification to the Cooperating Sponsor if additional services are necessary to protect cargo interests or if the surveyor has reason to believe that the correct quantity was not discharged; and

(G) In the case of shipments arriving in container vans, list the container van numbers and seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged. To the extent possible, the independent surveyor should observe discharge of container vans from the vessel to ascertain whether any damage to the container van occurred and arrange for surveying as container vans are opened.

(iii) Cooperating Sponsors shall send copies to KCMO/DMD, Chief, Debt Management Office of all reports and documents pertaining to the discharge of commodities.

(iv) CCC will reimburse the Cooperating Sponsor for costs incurred upon receipt of the survey report and the surveyor's invoice or other documents that establish the survey cost. CCC will not reimburse a Cooperating Sponsor for the costs of a delivery survey unless the surveyor also prepares a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless CCC determines that such action was justified in the circumstances.

(3) Survey contracts shall be let on a competitive bid basis unless CCC determines that the use of competitive bids would not be practicable. CCC may preclude the use of certain surveyors because of conflicts of interest or lack of demonstrated capability to properly carry out surveying responsibilities.

(4) If practicable, all surveys shall be conducted jointly by the surveyor, the consignee, and the ocean carrier, and the survey report shall be signed by all parties.

(d) *Ocean carrier loss and damage.* (1) Notwithstanding transfer of title, CCC shall have the right to file, pursue, and retain the proceeds of collection from claims arising from ocean transportation cargo loss and damage arising out of shipments of commodities provided to governmental Cooperating Sponsors; however, when the Cooperating Sponsor pays the ocean freight or a portion thereof, it shall be entitled to pro rata reimbursement received from any claims related to ocean freight charged. CCC will pay general average contributions for all valid general average incidents which may arise from the movement of commodity to the destination ports. CCC shall receive and retain all allowances in general average.

(2) Nongovernmental Cooperating Sponsors shall: file notice with the ocean carrier immediately upon discovery of any cargo loss or damage; promptly initiate claims against the ocean carriers for such loss and damage; take all necessary action to obtain restitution for losses, and (iv) provide

CCC copies of all such claims. Notwithstanding the preceding sentence the nongovernmental Cooperating Sponsor need not file a claim when the cargo loss is less than $100, or in any case when the loss is between $100 and $300 and the nongovernmental Cooperating Sponsor determines that the cost of filing and collecting the claim will exceed the amount of the claim. The nongovernmental Cooperating Sponsor shall transmit to KCMO/DMD, Chief, Debt Management Office information and documentation on such lost or damaged shipments when no claim is to be filed. In the event of a declaration General Average:

(i) The Cooperating Sponsor shall assign all claim rights to CCC and shall provide CCC all documentation relating to the claim, if applicable;

(ii) CCC will be responsible for settling general average and marine salvage claims;

(iii) CCC has sole authority to authorize any disposition of commodities which have not commenced ocean transit or of which the ocean transit is interrupted;

(iv) CCC will receive and retain any monetary proceeds resulting from such disposition;

(v) CCC will initiate, prosecute, and retain all proceeds of cargo loss and damage against ocean carriers and any allowance in general average; and

(vi) CCC will pay any general average or marine salvage claims determined to be due.

(3) Amounts collected by nongovernmental Cooperating Sponsors on claims against ocean carriers which are less than $200 may be retained by the nongovernmental Cooperating Sponsor. On claims involving loss or damage of $200 or more, nongovernmental Cooperating Sponsors may retain from collections received by them, either $200 plus 10 percent of the difference between $200 and the total amount collected on the claim, up to a maximum of $500; or the actual administrative expenses incurred in collection of the claim, provided retention of such administrative expenses is approved by CCC. Allowable collection costs shall not include attorneys fees, fees of collection agencies, and similar costs. In no event will CCC pay collection costs in excess of the amount collected on the claim.

(4) A nongovernmental Cooperating Sponsor also may retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling and packing costs, which the nongovernmental Cooperating Sponsor has incurred on the lost or damaged commodity and which are included in the claims and paid by the liable party.

(5) A nongovernmental Cooperating Sponsor may redetermine claims on the basis of additional documentation or information not considered when the claims were originally filed when such documentation or information clearly changes the ocean carrier's liability. Approval of such changes by CCC is not required regardless of amount. However, copies of redetermined claims and supporting documentation or information shall be furnished to CCC.

(6) A nongovernmental Cooperating Sponsor may negotiate compromise settlements of claims of any amount, provided that proposed compromise settlements of claims having a value of $5,000 or more shall require prior approval in writing by CCC. When a claim is compromised, a nongovernmental Cooperating Sponsor may retain from the amount collected, the amounts authorized in paragraph (d)(3) of this section, and in addition, an amount representing such percentage of the special charges described in paragraph (d)(4) of this section as compromised amount is to the full amount of the claim. When a claim is less than $600, a nongovernmental Cooperating Sponsor may terminate collection activity when it is determined that pursuit of such claims will not be economically sound. Approval for such termination by CCC is not required; however, the nongovernmental Cooperating Sponsor shall notify KCMO/DMD, Chief, Debt Management Division when collection activity on a claim is terminated.

(7) All amounts collected in excess of the amounts authorized in this section to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by a nongovernmental Cooperating Sponsor from the proceeds of claims filed

against ocean carriers, the word ''claim'' shall refer to the loss and damage to commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier.

(8) If a nongovernmental Cooperating Sponsor is unable to effect collection of a claim or negotiate an acceptable compromise settlement within the applicable period of limitation or any extension thereof granted in writing by the party alleged responsible for the damage, the nongovernmental Cooperating Sponsor shall assign its rights to the claim to CCC in sufficient time to permit the filing of legal action prior to the expiration of the period of limitation or any extension thereof. Generally, a nongovernmental Cooperating Sponsor should assign claim rights to CCC no later than 60 days prior to the expiration of the period of limitation or any extension thereof. In all cases, a nongovernmental Cooperating Sponsor shall keep CCC informed of the progress of its collection efforts and shall promptly assign their claim rights to CCC upon request. Subsequently, if CCC collects on or settles the claim, CCC shall, except as indicated in this paragraph pay to a nongovernmental Cooperating Sponsor the amount to which it would have been entitled had it collected on the claim. The additional 10 percent on amounts collected in excess of $200 will be payable, however, only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is determined to be commensurate with the extra efforts exerted in further documenting the claim. If documentation requirements have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC will deny payment of all allowances to the nongovernmental Cooperating Sponsor.

(9) When a nongovernmental Cooperating Sponsor permits a claim to become time-barred, or fails to take timely actions to insure the right of CCC to assert such claims, and CCC determines that the nongovernmental Cooperating Sponsor failed to properly exercise its responsibilities under the Agreement, the nongovernmental Cooperating Sponsor shall be liable to the United States for the cost and freight value of the commodities lost to the program.

(e) *Fault of Cooperating Sponsor in country of distribution.* If a commodity, sale proceeds or program income is used for a purpose not permitted by the Program Agreement, or if a Cooperating Sponsor causes loss or damage to a commodity, sale proceeds, or program income through any act or omission or failure to provide proper storage, care and handling, the cooperating sponsor shall pay to the United States the value of the commodities, sale proceeds or program income lost, damaged or misused. CCC will consider normal commercial practices in the country of distribution in determining whether there was a proper exercise of the Cooperating Sponsor's responsibility. Payment by the Cooperating Sponsor shall be made in accordance with paragraph (g) of this section.

(f) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey or outturn reports to determine ocean carrier loss and damage, the Cooperating Sponsor shall, in the case of landlocked countries, arrange for an independent survey at the point of entry into the recipient country and make a report as set forth in paragraph (c)(1) of this section. CCC will reimburse the Cooperating Sponsor for the costs of survey as set forth in paragraph (c)(2)(iv) of this section.

(2) Where any damage to or loss of the commodity or any loss of sale proceeds or program income is attributable to a warehouseman, carrier or other person, the Cooperating Sponsor shall make every reasonable effort to pursue collection of claims for such loss or damage. The Cooperating Sponsor shall furnish a copy of the claim and related documents to the Agricultural Counselor or Attache. Cooperating Sponsors who fail to file or pursue such claims shall be liable to CCC for the value of the commodities or sale proceeds or program income lost, damaged, or misused: *Provided*, however, that the Cooperating Sponsor

may elect not to file a claim if the loss is less than $500. The Cooperating Sponsor may retain $150 of any amount collected on an individual claim. In addition, Cooperating Sponsors may, with the written approval of the Agricultural Counselor or Attache, retain amounts to cover special costs of collection such as legal fees, or pay such collection costs with sale proceeds or program income. Any proposed settlement for less than the full amount of the claim requires prior approval by the Agricultural Counselor or Attache. When the Cooperating Sponsor has exhausted all reasonable attempts to collect a claim, it shall request the Agricultural Counselor or Attache to provide further instructions.

(3) The Cooperating Sponsor shall pursue any claim by initial billings and at least three subsequent demands at not more than 30 day intervals. If these efforts fail to elicit a satisfactory response, the Cooperating Sponsor shall pursue legal action in the judicial system of country unless otherwise agreed by the Agricultural Counselor or Attache. The Cooperating Sponsors must inform the Agricultural Counselor or Attache in writing of the reasons for not pursuing legal action; and the Agricultural Counselor or Attache may require the Cooperating Sponsor to obtain the opinion of competent legal counsel to support its decision prior to granting approval. If the Agricultural Counselor or Attache approves a Cooperating Sponsor's decision not to take further action on the claim, the Cooperating Sponsor shall assign the claim to CCC and shall forward all documentation relating to the claim to KCMO/DMD.

(4) As an alternative to legal action in the judicial system of the country with regard to claims against a public entity of the government of the cooperating country, the Cooperating Sponsor and the cooperating country may agree in writing to settle disputed claims by an appropriate administrative procedure or arbitration.

(g) *Determination of value.* The Cooperating Sponsor shall determine the value of commodities misused, lost or damaged on the basis of the domestic market price at the time and place the misuse, loss or damage occurred. When it is not feasible to determine such market price, the value shall be the f.o.b. or f.a.s. commercial export price of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the U.S. Government in making delivery to the Cooperating Sponsor. When the value is determined on a cost basis, the Cooperating Sponsor may add to the value any provable costs it has incurred prior to delivery by the ocean carrier. In preparing the claim statement, these costs shall be clearly segregated from costs incurred by the Government of the United States. With respect to claims other than ocean carrier loss or damage claims, the Cooperating Sponsor may request the Agricultural Counselor or Attache to approve a commercially reasonable alternative basis to value the claim.

(h) *Reporting losses to the Agricultural Counselor or Attache or CCC designated representative.* (1) The Cooperating Sponsor shall promptly notify the Agricultural Counselor or Attache or CCC designated representative, in writing, of the circumstances pertaining to any loss, damage, or misuse of commodities valued at $500 or more occurring within the country of distribution or intermediate country. The report shall be made as soon as the Cooperating Sponsor has adequately investigated the circumstances, but in no event more than ninety days from the date the loss became known to the Cooperating Sponsor. The report shall identify the party in possession of the commodities and the party responsible for the loss, damage or misuse; the kind and quantities of commodities; the size and type of containers; the time and place of misuse, loss, or damage; the current location of the commodity; the Program Agreement number, the CCC contract numbers, or if unknown, other identifying numbers printed on the commodity containers; the action taken by the Cooperating Sponsor with respect to recovery or disposal; and the estimated value of the commodity. The report shall explain why any of the information required by this paragraph cannot be provided. The Cooperating Sponsor shall also report the details regarding any loss or misuse of sale proceeds or program income.

(2) The Cooperating Sponsor shall report quarterly to the Agricultural Counselor or Attache any loss, damage to or misuse of commodities resulting in loss of less than $500. The Cooperating Sponsor shall inform the Agricultural Counselor or Attache or CCC designated representative if it has reason to believe there is a pattern or trend in the loss, damage, or misuse of such commodities and submit a report as described in paragraph (h)(1) of this section, together with any other relevant information the Cooperating Sponsor has available to it. The Agricultural Counselor or Attache may require additional information about any commodities lost, damaged or misused.

(i) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in the currency in which freight is paid) and shall be remitted (less amounts authorized to be retained) by Cooperating Sponsors to CCC. Claims against Cooperating Sponsors shall be paid to CCC in U.S. dollars. With respect to commodities lost, damaged or misused, amounts paid by Cooperating Sponsors and third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably in U.S. dollars with instructions to credit the deposit to an appropriate CCC account as determined by CCC, or in local currency at the highest rate of exchange legally obtainable on the date of deposit with instructions to credit the deposit to an appropriate CCC account as determined by CCC. With respect to sale proceeds and program income, amounts recovered may be deposited in the same account as the sale proceeds and may be used for purposes of the program.

[61 FR 60515, Nov. 29, 1996, as amended at 63 FR 59877, Nov. 6, 1998]

§ 1499.16 Records and reporting requirements.

(a) *Records and reports—general requirements.* The Cooperating Sponsor shall maintain records for a period of three (3) years from the date of export of the commodities that accurately reflect the receipt and use of the commodities and any proceeds realized from the sale of commodities. The Government of the Exporting Country may, at reasonable times, inspect the Cooperating Sponsor's records pertaining to the receipt and use of the commodities and proceeds realized from the sale of the commodities, and have access to the Cooperating Sponsor's commodity storage and distribution sites and to locations of activities supported with proceeds realized from the sale of the commodities.

(b) *Evidence of export.* The Cooperating Sponsor's freight forwarder shall, within thirty (30) days after export, submit evidence of export of the agricultural commodities to the Chief, Export Operations Division, KCCO. If export is by sea or air, the Cooperating Sponsor's freight forwarder shall submit five copies of the carrier's on board bill of lading or consignee's receipt authenticated by a representative of the U.S. Customs Service. The evidence of export must show the kind and quantity of agricultural commodities exported, the date of export, and the destination country.

(c) *Reports.* (1) The Cooperating Sponsor shall submit a semiannual logistics report to the Agricultural Counselor or Attache and to the Director, CCC Program Support Division, FAS/USDA, Washington, DC 20250–1031, covering the receipt of commodities. Cooperating sponsors must submit reports on Form CCC–620 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31, or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all commodities have been distributed or sold and such distribution or sale reported to CCC. The report must contain the following data:

(i) Receipts of agricultural commodities including the name of each vessel, discharge port(s) or point(s) of entry, the date discharge was completed, the condition of the commodities on arrival, any significant loss or damage in transit; advice of any claim for, or recovery of, or reduction of freight charges due to loss or damage in transit on U.S. flag vessels;

(ii) Estimated commodity inventory at the end of the reporting period;

(iii) Quantity of commodity on order during the reporting period;

(iv) Status of claims for commodity losses both resolved and unresolved during the reporting period;

(v) Quantity of commodity damaged or declared unfit during the reporting period; and

(vi) Quantity and type of the commodity that has been directly distributed by the Cooperating Sponsor, distribution date, region of distribution, and estimated number of individuals benefiting from the distribution.

(2) If the Program Agreement authorizes the sale or barter of commodities by the Cooperating Sponsor, the Cooperating Sponsor shall also submit a semiannual monetization report to the Agricultural Counselor or Attache and to the Director, CCC Program Support Division, FAS/USDA, Washington, DC 20250–1031, a monetization report covering the deposits into and disbursements from the special account for the purposes specified in the Program Agreement. Cooperating Sponsors must submit reports on Form CCC–621 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31, or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all funds generated from commodity sales have been distributed and such distribution reported to CCC. The report must contain the following information and include both local currency amounts and U.S. dollar equivalents:

(i) Quantity and type of commodities sold;

(ii) Proceeds generated from the sale;

(iii) Proceeds deposited to the special account including the date of deposit;

(iv) Interest earned on the special account;

(v) Disbursements from the special account, including date, amount and purpose of the disbursement;

(vi) Any balance carried forward in the special account from the previous reporting period; and

(vii) In connection with a section 416(b) Program Agreement only, a description of the effectiveness of sales and barter provisions in facilitating the distribution of commodities and products to targeted recipients, and a description of the extent, if any, that sales, barter or use of commodities:

(A) Affected the usual marketings of the United States;

(B) Displaced or interfered with commercial sales of the United States;

(C) Disrupted world commodity prices or normal patterns of trade with friendly countries;

(D) Discouraged local production and marketing of commodities in the recipient country;

(E) Achieved the objectives of the Program Agreement; and

(F) Could be improved in future agreements.

(3) The Cooperating Sponsor shall furnish the Government of the Exporting Country such additional information and reports relating to the agreement as the Government of the Exporting Country may reasonably request.

[61 FR 60515, Nov. 29, 1996, as amended at 63 FR 59878, Nov. 6, 1998]

§ 1499.17 Audits.

Nongovernmental Cooperating Sponsors shall assure that audits are performed to assure compliance with Program Agreements and the provisions of this part. An audit undertaken in accordance with OMB Circular A–133, shall fulfill the audit requirements of this section. Audits shall be performed at least annually until all commodities have been distributed and sale proceeds expended. Both the auditor and the auditing standards to be used by the Cooperating Sponsor must be acceptable to CCC. The Cooperating Sponsor is also responsible for auditing the activities of recipient agencies that receive more than $25,000 of provided commodities or sale proceeds. This responsibility may be satisfied by relying upon independent audits of the recipient agency or upon a review conducted by the Cooperating Sponsor.

§ 1499.18 Suspension of the program.

All or any part of the assistance provided under a Program Agreement, including commodities in transit, may be suspended by CCC if:

(a) The Cooperating Sponsor fails to comply with the provisions of the Program Agreement or this part;

(b) CCC determines that the continuation of such assistance is no longer necessary or desirable; or

(c) CCC determines that storage facilities are inadequate to prevent spoilage or waste, or that distribution of commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the recipient country.

§ 1499.19 Sample documents and guidelines for developing proposals and reports.

CCC has developed guidelines to assist the Cooperating Sponsors in developing proposals and reporting on program logistics and commodity sales. Cooperating Sponsors may obtain these guidelines from the Director, PDD.

§ 1499.20 Paperwork reduction requirement.

The paperwork and record keeping requirements imposed by this part have been previously submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995. OMB has assigned control number 0551–0035 for this information collection.

CHAPTER XV—FOREIGN AGRICULTURAL SERVICE, DEPARTMENT OF AGRICULTURE

Part		*Page*
1520	Availability of information to the public	?
1530	The Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program	?
1540	International agricultural trade	?
1560	Procedures to monitor Canadian fresh fruit and vegetable imports	?
1570	Export Bonus Programs	?

PART 1520—AVAILABILITY OF INFORMATION TO THE PUBLIC

Subpart A—General

Sec.
1520.1 General statement.
1520.2 Organizational description.

Subpart B—Availability of Program Information Staff Manuals, and Related Material

1520.3 Public inspection and copying.
1520.4 Indexes.

Subpart C—Availability of Identifiable Records

1520.5 Request for records.
1520.6 Appeals.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 40 FR 27008, June 26, 1975, unless otherwise noted.

Subpart A—General

§ 1520.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture part 1, subpart A of subtitle A, of this title (7 CFR 1.1 to 1.16 and appendix A thereto), implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's Regulations, as implemented by the regulations in this part govern the availability of records of the Foreign Agricultural Service (FAS) to the public.

§ 1520.2 Organizational description.

The description of the organization of FAS is published as a notice in the FEDERAL REGISTER and may be revised from time to time in like manner. Such description contains a listing of FAS organizational units and their functions.

Subpart B—Availability of Program Information Staff Manuals, and Related Material

§ 1520.3 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials through the Information Division, FAS, Room 5074, South Building, Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250–1004. The office will be open from 8:30 a.m. to 5 p.m. Monday through Friday, except legal holidays.

[61 FR 2898, Jan. 30, 1996]

§ 1520.4 Indexes.

5 U.S.C. 552(a)(2) required that each agency publish or otherwise make available a current index of all materials required to be made available for public inspection and copying. Copies of the FAS Index may be obtained free of charge by telephoning (202) 720–7115 or writing to the Freedom of Information Officer, Information Division, FAS, Ag Box 1004, Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250–1004.

[61 FR 2898, Jan. 30, 1996]

Subpart C—Availability of Identifiable Records

§ 1520.5 Request for records.

(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to the Freedom of Information Officer, Information Division, Foreign Agricultural Service, Ag Box 1004, Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250–1004.

(b) Processing of a request for information can be facilitated if ''FOIA REQUEST'' is placed in capital letters on the front of the envelope and at the top of the letter. Additional information may be obtained by telephoning the FAS Information Division on (202) 720–7115.

[61 FR 2868, Jan. 30, 1996]

§ 1520.6 Appeals.

(a) Any person whose request under § 1520.5 is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Foreign Agricultural Service, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1001.

(b) In the event the request is denied and the requestor wishes to appeal such decision, it will facilitate processing such appeal by placing the words ''FOIA APPEAL'' in capital letters on the front of the envelope and at the top of the appeal letter. Additional information may be obtained by telephoning the FAS Information Division on (202) 720–7115.

[40 FR 27008, June 26, 1975, as amended at 61 FR 2898, Jan. 30, 1996]

PART 1530—THE REFINED SUGAR RE-EXPORT PROGRAM, THE SUGAR CONTAINING PRODUCTS RE-EXPORT PROGRAM, AND THE POLYHYDRIC ALCOHOL PROGRAM

Sec.

1530.100 General statement.
1530.101 Definitions.
1530.102 Nature of the license.
1530.103 License eligibility.
1530.104 Application for a license.
1530.105 Terms and conditions.
1530.106 License charges and credits.
1530.107 Bond or letter of credit requirements.
1530.108 Revocation or surrender of licenses.
1530.109 Reporting.
1530.110 Records, certification, and documentation.
1530.111 Enforcement and penalties.
1530.112 Administrative appeals.
1530.113 Waivers.
1530.114 Implementation.
1530.115 Paperwork Reduction Act assigned number.

AUTHORITY: Additional U.S. note 6 to chapter 17 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202); 19 U.S.C. 3314; Proc. 6641, 58 FR 66867, 3 CFR, 1994 Comp., p. 172; Proc. 6763, 60 FR 1007, 3 CFR, 1995 Comp., p. 146.

SOURCE: 64 FR 7062, Feb. 12, 1999, unless otherwise noted.

§ 1530.100 General statement.

This part provides regulations for the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program. Under these provisions, refiners may enter raw sugar unrestricted by the quantitative limit established for the raw sugar tariff-rate quota or the requirements of certificates of quota eligibility provided for in 15 CFR part 2011, as long as licensees under the programs export an equivalent quantity of refined sugar, either as refined sugar or as an ingredient in sugar containing products, or use the refined sugar in the production of certain polyhydric alcohols.

§ 1530.101 Definitions.

Affiliated persons means two or more persons where one or more of said persons directly or indirectly controls or has the power to control the other(s), or, a third person controls or has the power to control the others. Indications of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.

Agent means a person who represents the licensee in any program transaction. An agent shall not, at any time, own any of the product produced by the program licensee. Agents may include brokers, shippers, freight forwarders, expediters, and co-packers.

Bond or letter of credit means an insurance agreement pledging surety for the entry of foreign sugar without the required re-export within the program guidelines.

Certain polyhydric alcohols means any polyhydric alcohol, except polyhydric alcohol produced by distillation or polyhydric alcohol used as a substitute for sugar as a sweetener in human food.

Co-packer means a person who adds value to a licensed manufacturer's product, or produces a product for export by a licensed manufacturer.

Date of entry means the date raw sugar enters the U.S. Customs Territory.

Date of export means the date refined sugar or sugar containing products are exported from the U.S. Customs Territory, or, if exported to a restricted foreign trade zone, the date shown on the U.S. Customs Service form designating the product as restricted for export.

Date of transfer means the date that ownership of program sugar is conveyed from a refiner to a manufacturer or producer licensee.

Day means calendar day. When the day for complying with an obligation under this part falls on a weekend or

Federal holiday, the obligation may be completed on the next business day.

Documentation agreement means a signed and notarized letter from a licensee specifying certain documentation that the licensee shall obtain and maintain on file before said licensee requests from USDA updating of a license balance.

Enter or entry means importation into the U.S. Customs Territory, or withdrawal from warehouse for consumption, as those terms are used by the U.S. Customs Service.

Export means the conveyance (shipment) of sugar or a sugar containing product from a licensee under this part to a country outside the U.S. Customs Territory, or to a restricted foreign trade zone.

Licensing Authority means a person designated by the Director, Import Policies and Programs Division, Foreign Agricultural Service, USDA.

Manufacturer means a person who produces or causes to be produced on their behalf a sugar containing product for export under the provisions of this part.

Person means any individual, partnership, corporation, association, estate, trust, or any other business enterprise or legal entity.

Program sugar means sugar that has been charged or credited to the license of a licensee in conformity with the provisions of this part.

Program transaction means an appropriate entry, transfer, use, or export of program sugar.

Refined sugar means any product that is produced by a refiner by refining raw cane sugar and that can be marketed as commercial, industrial or retail sugar.

Refiner means any person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

Sugar containing product means any product, other than those products normally marketed by cane sugar refiners, that is produced from refined sugar or to which refined sugar has been added as an ingredient.

Transfer means the transfer of legal title of program sugar from a licensed refiner to a licensed manufacturer of a sugar containing product or a licensed producer of certain polyhydric alcohols for the production of sugar containing products or the production of certain polyhydric alcohols.

Unique number means a tracking number established by a licensee for a transaction (entry, transfer, export, or use). A unique number is established for a transaction to or from a specific country or licensee. The unique number is also assigned by the licensee to a file that contains all of the supporting documentation for the transaction for which it was established. The unique number is the means by which program transactions will be tracked.

§ 1530.102 Nature of the license.

(a) A person who wishes to participate in the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, or the Polyhydric Alcohol Program must first obtain a license from the USDA, through the Licensing Authority.

(b) A license under the Refined Sugar Re-export Program permits a refiner to enter raw cane sugar under subheading 1701.11.20 of the HTS, and export an equivalent quantity of refined sugar onto the world market or transfer an equivalent quantity of refined sugar to licensees under the Sugar Containing Products Re-export Program or the Polyhydric Alcohol Program.

(c) A license under the Sugar Containing Products Re-export Program or Polyhydric Alcohol Program permits licensees to receive transfers and export an equivalent quantity of sugar as an ingredient in sugar containing products, or use an equivalent quantity of sugar in the production of certain polyhydric alcohols.

(d) All refining, manufacturing, and production shall be accomplished in the U.S. Customs Territory, and within time-frames and quantity limitations prescribed in this part. Program sugar and non-program sugar are substitutable.

(e) A licensee must establish a bond or a letter of credit in favor of the U.S. Department of Agriculture to charge program sugar in anticipation of the export or transfer of refined sugar, the export of sugar in sugar containing

products, or the production of certain polyhydric alcohols.

§ 1530.103 License eligibility.

(a) A raw cane sugar refiner, a manufacturer of sugar containing products, or a producer of certain polyhydric alcohols, that owns and operates a facility within the U.S. Customs Territory, is eligible for a license to participate in the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, or the Polyhydric Alcohol Program, respectively.

(b) No person may apply for or hold more than one license, including a license held by an affiliated person.

(c) Notwithstanding paragraph (b) of this section, a person who owns one or more wholly-owned subsidiary corporations manufacturing sugar containing products or producing certain polyhydric alcohols, which would otherwise qualify for an individual license, is eligible for a consolidated license to cover the program transactions and other program activities of both the parent corporation and the subsidiary corporation(s). The program transactions and other program activities of the subsidiary corporation(s) covered by a consolidated license shall be treated as the activities of the corporation holding the consolidated license.

(d) Notwithstanding paragraph (c) of this section, each wholly-owned subsidiary manufacturing sugar containing products or producing certain polyhydric alcohols may establish a license for program activities instead of the parent corporation establishing a consolidated license. The sum total of license limits for the parent corporation and its wholly-owned subsidiary corporation(s) shall not exceed the quantitative limits established in § 1530.105 of this part.

§ 1530.104 Application for a license.

(a) A person seeking a license shall apply in writing to the Licensing Authority and shall submit the following information:

(1) The name and address of the applicant;

(2) The address at which the applicant will maintain the records required under § 1530.110;

(3) The address(es) of the applicant's processing plant(s), including any wholly-owned subsidiary(s) and plant(s) in the case of a consolidated license, and including those of any co-packer(s);

(4) In the case of a refined sugar product, the polarity of the product and the formula proposed by the refiner for calculating the refined sugar in the product;

(5) In the case of a sugar containing product, the percentage of refined sugar (100 degree polarity), on a dry weight basis, contained in such product(s);

(6) In the case of polyhydric alcohol, the quantity of refined sugar used producing certain polyhydric alcohols; and

(7) A certification explaining that the applicant is not affiliated with any other licensee, or explaining any affiliations, should they exist.

(b) A documentation agreement must be concluded with the Licensing Authority.

(c) If any of the information required by paragraph (a) of this section changes, the licensee shall promptly apply to the Licensing Authority to amend the application to include such changes.

§ 1530.105 Terms and conditions.

(a) A licensed refiner (refiner) shall, not later than 90 days after entering a quantity of raw cane sugar under subheading 1701.11.20 of the HTS, export or transfer an equivalent quantity of refined sugar if the entry results in a positive license balance.

(b) A licensed sugar containing products manufacturer (manufacturer) or a licensed polyhydric alcohol producer (producer) shall, not later than 18 months from the date of transfer of a quantity of refined sugar from a refiner, export an equivalent quantity of refined sugar as an ingredient in a sugar containing product if the transfer results in a positive license balance, or use an equivalent quantity of refined sugar in the production of certain polyhydric alcohols if the transfer results in a positive license balance, respectively.

(c) Notwithstanding paragraphs (a) and (b) of this section, licensees may receive credit for the exportation or

transfer of refined sugar, the exportation of a sugar containing product, or the production of certain polyhydric alcohols prior to the corresponding date of entry of raw cane sugor the date of transfer of refined sugar.

(d) Licensees are encouraged to submit monthly program transaction reports, but shall report no later than 90 days from the date of entry, transfer, export, or use.

(e) A refiner may enter raw sugar, or a manufacturer or producer may receive a transfer of refined sugar, in anticipation of the transfer or export of refined sugar (refiner), the export of sugar in sugar containing products (manufacturer) or the production of a polyhydric alcohol (producer) not to exceed the value of a bond or letter of credit, which must be established pursuant to §1530.107 of this part. The value of a bond or letter of credit shall not exceed the license limits established in this section.

(f) A refiner shall not exceed a license balance of 50,000 metric tons, raw value for the sum of all charges and credits.

(g) A refiner may enter raw sugar from Mexico and re-export, within 30 days of entry, refined sugar to Mexico without a charge against the refiner's license balance. If the refined sugar is not re-exported to Mexico within 30 days of entry, the license shall be charged the quantity that has not been re-exported.

(h) A manufacturer or a producer shall not exceed a license balance of 10,000 short tons, refined value for the sum of all charges and credits.

(i) A manufacturer's or a producer's consolidated license balance, or the sum of a parent company and wholly-owned subsidiary license balances if held separately, shall not exceed a license balance of 25,000 short tons, refined value for the sum of all charges and credits.

(j) For the purposes of the programs governed by this part, sugar is fully substitutable. The refined sugar transferred, exported, or used does not need to be the same sugar produced by refining raw sugar entered under subheading 1701.11.20 of the HTS.

(k) A licensee may use an agent to carry out the requirements of participation in the program. The licensee must retain ownership of and responsibility for the product until exported from the U.S. Customs Territory, to a restricted foreign trade zone, or used in the production of certain polyhydric alcohols, and must establish and maintain sufficient documentation, as agreed in the documentation agreement pursuant to §1530.110, to substantiate export of the product or the production of certain polyhydric alcohols.

(l) A license may be assigned only with the written permission of the Licensing Authority and subject to such terms and conditions as the Licensing Authority may impose.

(m) The Licensing Authority may impose such conditions, limitations or restrictions in connection with the use of a license at such time and in such manner as the Licensing Authority, at his or her discretion, determines to be necessary or appropriate to achieve the purposes of the relevant program.

§1530.106 License charges and credits.

(a) A license shall be charged or credited for the quantity of sugar entered, transferred, exported, or used, adjusted to a dry weight basis. Refiner quantities shall be adjusted to raw value, using the formulas set forth in paragraphs (a) (1), (2), and (3) of this section. Manufacturer and producer quantities shall be adjusted to 100 degrees polarity on a dry weight basis.

(1) To adjust the raw value for sugar with a polarization of less than 92 degrees, divide the total sugar content by 0.972 (polarization × outturn weight/.972).

(2) To adjust the raw value for sugar with polarization of 92 degrees or above, multiply the polarization times 0.0175, subtract 0.68, and multiply the difference by the outturn weight (((polarization × 0.0175) − 0.68) × outturn weight).

(3) To determine the quantity of refined sugar that must be transferred or exported to equal a corresponding quantity of entered raw sugar charged to a license, divide the quantity of entered raw sugar by 1.07 (raw quantity/1.07).

(b) [Reserved]

§ 1530.107 Bond or letter of credit requirements

(a) The licensee may charge program sugar in anticipation of the transfer or export of refined sugar, the export of sugar in sugar containing products, or the production of certain polyhydric alcohols, if the licensee establishes a performance bond or a letter of credit with the U.S. Department of Agriculture, which meets the criteria set forth in this section.

(b) The bond or letter of credit may cover entries made either during the period of time specified in the bond (a term bond) or for a specified entry (a single entry bond).

(c) Only the licensee who will refine the sugar, manufacture the sugar containing product, or produce certain polyhydric alcohols may be the principal on the bond or letter of credit covering such sugar to be re-exported or used in the production of certain polyhydric alcohols. The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(d) The obligation under the bond or letter of credit shall be made effective no later than the date of entry of the sugar for refiners or the date of transfer of the corresponding sugar for manufacture into a sugar containing product or certain polyhydric alcohols.

(e) The amount of the bond or letter of credit shall be equal to 20 cents per pound of sugar to be entered under the license.

(f) If a licensee fails to qualify for credit to a license within the specified time period of the date of export or use of corresponding sugar in an amount sufficient to offset the charge to the license for that corresponding sugar, payment shall be made to the U.S. Treasury. The payment shall be equal to the difference between the Number 11 contract price and the Number 14 contract price (New York Coffee, Sugar and Cocoa Exchange) in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export or use was required, whichever difference is greater. The difference shall be multiplied by the quantity of refined sugar, converted to raw value, that should have been exported in compliance with this part. If there was not a Number 11, or a Number 14 contract price for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

§ 1530.108 Revocation or surrender of licenses.

(a) A license may be revoked upon written notice by the Licensing Authority.

(b) A licensee may surrender a license when the sum of all credits is equal to or greater than the sum of all charges.

§ 1530.109 Reporting.

(a) A licensee may submit as often as monthly for charges and credits against a license balance, but must submit at least a quarterly report to the Licensing Authority not later than 90 days after the earliest transaction in the report for which credits or charges are being submitted. The licensee need not report when there have not been transactions during the reporting period.

(b) Reports may be submitted by e-mail, U.S. mail, private courier, or in person, but must be in an integrated database format acceptable to the Licensing Authority. A copy of this format may be obtained from the Licensing Authority. Applicants unable to submit a report in the specified electronic format may seek a temporary waiver to permit them to submit the report on paper.

(c) The reports must include the following for all program transactions:

(1) A unique number associated with the transaction;

(2) The date of the entry, transfer (only a refiner shall report transfers to the Licensing Authority), export, or use;

(3) The quantity of program sugar entered, transferred, exported as refined sugar, or used in the production of certain polyhydric alcohols;

(4) The licensee's license number, or if a transfer is being reported, the licensee's license number as well as the transfer recipient's license number;

(5) The country of origin (entry of raw sugar) or final destination (refined

exports), using the exact country code designated in the HTS; and

(6) The initial and final polarization, and final weight (when available) for entries of raw sugar.

(d) Licensees have an affirmative and continuing duty to maintain the accuracy of the information contained in previously submitted reports.

(1) The licensee shall immediately notify the Licensing Authority and promptly request that previously claimed credits be charged back upon discovery that previously claimed exports of refined sugar, refined sugar in sugar containing products, or refined sugar used in the production of polyhydric alcohol were re-entered into the U.S. Customs Territory without substantial transformation, not used in the production of certain polyhydric alcohols, made under a false underlying proof of export, or made but previously submitted exports do not otherwise satisfy the requirements of regulations or the documentation agreement.

(2) Charge backs shall be as of the date of the erroneously claimed credit.

§ 1530.110 Records, certification, and documentation.

(a) A licensee shall establish a documentation agreement with the Licensing Authority before submitting for credit against a license. The licensee shall propose to the Licensing Authority a list of documents to substantiate entries, transfers, exports, or use as appropriate. The Licensing Authority shall consider the licensee's proposal to assure that it provides that a program transaction is fully substantiated, and shall then respond in writing to the licensee in a timely fashion outlining any deficiencies. Once agreed, the licensee shall submit a notarized letter specifying the documents to be maintained on file and certifying that the charges and credits made pursuant to § 1530.106 will be kept on file, identifiable by a unique number, and available for inspection pursuant to § 1530.110.

(b) For all transactions, the documentation shall:

(1) Substantiate the information required in § 1530.109 (c), and the completion of the reported transaction;

(2) Establish the buyer and seller specifications for a transaction;

(3) Include all U.S. Customs forms submitted in the entry or export process;

(4) Provide the correct telephone numbers and addresses of any agents, consignees, foreign purchasers, and non-vessel operating common carriers used in completing the transaction;

(5) Indicate the port of entry or export for the program transaction;

(6) Provide the percentage of sugar in a sugar containing product or certain polyhydric alcohols; and

(7) Provide the name of export carrier, vessel name, and container number.

(c) The licensee shall maintain the documentation established in the documentation agreement for 5 years from the date of such program transaction.

(d) Upon request, the licensee shall make the records, outlined by the documentation agreement and identified (associated) by the unique number assigned by the licensee to the program transaction as reported to the Licensing Authority for posting against a license balance, available for inspection and copying by the Licensing Authority, the Compliance Review Staff of the Foreign Agricultural Service, and/or the Office of the Inspector General, USDA, the U.S. Department of Justice, or any U.S. Government regulatory or investigative office.

§ 1530.111 Enforcement and penalties.

(a) The Licensing Authority may revoke credits granted on a license if the credits granted do not meet the requirements set forth in the regulations of this part, or if the licensee does not voluntarily charge back credits erroneously claimed in accordance with these regulations. The Licensing Authority may also recommend revocation of a license, if the licensee has been in violation of § 1530.109 (c) of this part.

(b) The Administrator of the Foreign Agricultural Service, USDA, may suspend or revoke a license upon recommendation of the Licensing Authority. Suspension of a license will be governed by 7 CFR part 3017, subpart D and debarment will be governed by 7 CFR part 3017, subpart C.

§ 1530.112 Administrative appeals.

(a) The licensee may appeal the Licensing Authority's determination by filing a written notice of appeal, signed by the licensee or the licensee's agent, with the Director, Import Policies and Programs Division, Foreign Agricultural Service (Director), or his or her designee. The decision on such an appeal shall be made by the Director, and will be governed by § 3017.515 of this title. The appeal must be filed not later than 30 days after the date of the Licensing Authority's determination, and shall contain the licensee's written argument.

(b) The licensee may request an informal hearing. The Director shall arrange a place and time for the hearing, except that it shall be held within 30 days of the filing date of the notice of appeal if the licensee so requests.

(c) The licensee may be represented by counsel, and shall have full opportunity to present any relevant evidence, documentary or testimonial. The Director may permit other individuals to present evidence at the hearing and the licensee shall have an opportunity to question those witnesses.

(d) The licensee may request a verbatim transcript of the hearing, and shall be responsible for arranging for a professional reporter and shall pay all attendant expenses.

(e) The Director shall make the determination on appeal, and may affirm, reverse, modify or remand the Licensing Authority's determination. The Director shall notify the licensee in writing of the determination on appeal and of the basis thereof. The determination on appeal exhausts the licensee's administrative remedies.

§ 1530.113 Waivers.

Upon written application of the licensee or at the discretion of the Licensing Authority, and for good cause, the Licensing Authority may extend the period for transfer, export, or production, and/or may temporarily increase a maximum license limit, may extend the period for submitting regularly scheduled reports, or may temporarily waive or modify any other requirement imposed by this part if the Licensing Authority determines that such a waiver will not undermine the purpose of the relevant program or adversely affect domestic sugar policy objectives. The Licensing Authority may specify additional requirements or procedures in place of the requirements or procedures waived or modified.

§ 1530.114 Implementation.

Current program participants may qualify under this rule upon concluding a documentation agreement with the Licensing Authority, but must conclude a documentation agreement within 24 months of the effective date of this rule. Participant license balances, as of the effective date of this rule, shall continue under this rule.

§ 1530.115 Paperwork Reduction Act assigned number.

Licensees are not required to respond to requests for information unless the form for collecting information displays a currently valid Office of Management and Budget (OMB) control number. OMB has approved the information collection requirements contained in this part in accordance with 44 U.S.C. chapter 35. OMB number 0551–0015 has been assigned and will expire November 30, 1999.

PART 1540—INTERNATIONAL AGRICULTURAL TRADE

Subpart A—Emergency Relief From Duty-Free Imports of Perishable Products

Sec.
1540.1 Applicability of subpart.
1540.2 Definitions.
1540.3 Who may file request.
1540.4 Contents of request.
1540.5 Submission of recommendations.
1540.6 Information.
1540.7 Paperwork Reduction Act assigned number.

Subpart B—Emergency Relief From Certain Perishable Products Imported From Israel

1540.20 Applicability of subpart.
1540.21 Definition.
1540.22 Who may file request.
1540.23 Contents of request.
1540.24 Determination of the Secretary of Agriculture.
1540.25 Information.
1540.26 Paperwork Reduction Act assigned number.

Subpart C—Emergency Relief From Duty-Free Imports of Perishable Products From Certain Andean Countries

1540.40 Applicability of subpart.
1540.41 Definitions.
1540.42 Who may file request.
1540.43 Contents of request.
1540.44 Submission of recommendations by the Secretary of Agriculture.
1540.45 Information.

AUTHORITY: Sec. 213(f), Pub. L. 98–67, 97 Stat. 391 (19 U.S.C. 2703(f)); 5 U.S.C. 301; sec. 404, Pub. L. 98–573, 98 Stat. 3016, as amended (19 U.S.C. 2112 note); 5 U.S.C. 301.

Subpart A—Emergency Relief From Duty-Free Imports of Perishable Products

AUTHORITY: Sec. 213(f), Pub. L. 98–67, 97 Stat. 391 (19 U.S.C. 2703(f); 5 U.S.C. 301.

SOURCE: 49 FR 22265, May 29, 1984, unless otherwise noted.

CROSS REFERENCE: For United States International Trade Commission regulations on investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

§ 1540.1 Applicability of subpart.

This subpart applies to requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 213(f) of the Caribbean Basin Economic Recovery Act of 1983, title II of Pub. L. 98–67, 97 Stat. 384 (19 U.S.C. 2701 *et seq.*) (the Act).

§ 1540.2 Definitions.

(a) *Perishable product* means:

(1) Live plants provided for in subpart A of part 6 of schedule 1 of the Tariff Schedules of the United States (TSUS);

(2) Fresh or chilled vegetables provided for in items 135.10 through 138.42 of the TSUS;

(3) Fresh mushrooms provided for in item 144.10 of the TSUS;

(4) Fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS;

(5) Fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(6) Concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(b) *Beneficiary country* means any country listed in section 212(b) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

§ 1540.3 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group or workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported into the United States duty-free under the provisions of the Act from a beneficiary country(ies) in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.4 Contents of request.

A request for emergency action under section 213(f) of the Act shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such requests shall be supported by appropriate information and data and shall include to the extent possible:

(a) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(b) The beneficiary country(ies) of origin of the allegedly injurious imports;

(c) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from the designated beneficiary country(ies) in increased quantities as compared with imports of the same product from the designated beneficiary country(ies) during a previous representative period of time (including a statement of why the period used should be considered to be representative);

(d) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from the beneficiary country(ies); and

(e) A statement indicating why emergency action would be warranted under section 213(f) of the Act (including all available evidence that the injury caused by the increased quantities of imports from the beneficiary country(ies) would be relieved by the suspension of the duty-free treatment accorded under the Act).

A copy of the petition and the supporting evidence filed with the United States International Trade Commission under section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.5 Submission of recommendations.

If the Secretary has reason to believe that the perishable product which is the subject of a petition under § 1540.4 of this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.4 of this subpart, shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary shall publish a notice of such determination and will so advise the petitioner within 14 days after the filing of the petition.

§ 1540.6 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of section 213(f) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§ 1540.7 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. chapter 25, and OMB number 0551–0018 has been assigned.

Subpart B—Emergency Relief From Certain Perishable Products Imported From Israel

AUTHORITY: Sec. 404, Pub. L. 98–573, 98 Stat. 3016, as amended (19 U.S.C. 2112 note); 5 U.S.C. 301.

SOURCE: 50 FR 43692, Oct. 29, 1985, unless otherwise noted.

CROSS REFERENCE: For U.S. International Trade Commission regulations concerning investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

§ 1540.20 Applicability of subpart.

This subpart applies to requests filed with the Department of Agriculture under section 404 of the Trade and Tariff Act of 1984, Pub. L. 98–573, for emergency relief from imports of certain perishable products from Israel entering the United States at a reduced rate of duty or duty-free pursuant to a trade agreement between the United States and Israel entered into under section 102(b)(1) of the Trade Act of 1974, as amended.

§ 1540.21 Definition.

Perishable product means:

(a) Live plants provided for in subpart A of part 6 of schedule 1 of the 1985 Tariff Schedules of the United States (the ''TSUS'');

(b) Fresh or chilled vegetables provided for in items 135.03 through 138.46 of the TSUS;

(c) Fresh mushrooms provided for in item 144.10 of the TSUS;

(d) Fresh fruits provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.44, 147.50 through 149.21 and 149.50 of the TSUS;

(e) Fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(f) Concentrated citrus fruit juice provided for in items 165.25, 165.29 and 165.36 of the TSUS.

§ 1540.22 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group or workers, trade association, or certified or recognized union which is representative of a domestic industry

producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported from Israel into the United States at a reduced duty or duty-free under the provisions of a trade agreement between the United States and Israel entered into under section 102(b)(1) of the Trade Act of 1974, as amended, in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.23 Contents of request.

A request for emergency action under section 404 of the Trade and Tariff Act of 1984 shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such request shall be supported by appropriate information and data and shall include to the extent possible:

(a) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(b) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from Israel in increased quantities as compared with imports of the same product from Israel during a previous representative period of time (including a statement of why the period selected by the petitioner should be considered to be representative);

(c) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from Israel; and

(d) A statement indicating why emergency action would be warranted under section 404 (including all available evidence that the injury caused by the increased quantities of imports from Israel would be relieved by the withdrawal of the reduction of the duty or elimination of the duty-free treatment provided to the product under the trade agreement). A copy of the petition and the supporting evidence filed with the United States International Trade Commission under section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.24 Determination of the Secretary of Agriculture.

If the Secretary of Agriculture has reason to believe that the perishable product(s) which is the subject of a petition under this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.23 shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary, within 14 days after the filing of the petition, will publish in the FEDERAL REGISTER a notice of such determination and will so advise the petitioner.

§ 1540.25 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of section 404 of the Trade and Tariff Act of 1984 should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§ 1540.26 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. chapter 25, and OMB number 0551–0023 has been assigned.

Subpart C—Emergency Relief From Duty-Free Imports of Perishable Products From Certain Andean Countries

AUTHORITY: Title II, sec. 204(e), Pub. L. 102–182, 105 Stat. 1239 (19 U.S.C. 3203(e)); 5 U.S.C. 301.

SOURCE: 58 FR 16104, Mar. 25, 1993, unless otherwise noted.

CROSS REFERENCE: For United States International Trade Commission regulations on

investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

§ 1540.40 Applicability of subpart.

This subpart applies to requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 204(e) of the Andean Trade Preference Act, title II of Public Law 102–182, 105 Stat. 1236 (19 U.S.C. 3201 *et seq.*) (the ''Act'').

§ 1540.41 Definitions.

(a) *Perishable product* means:

(1) Live plants and fresh cut flowers provided for in chapter 6 of the Harmonized Tariff Schedule (HTS);

(2) Fresh or chilled vegetables provided in heading 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(3) Fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; or

(4) Concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(b) *Beneficiary country* means any country listed in subsection 203(b)(1) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

§ 1540.42 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group of workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported into the United States duty-free under the provisions of the Act from a beneficiary country(ies) in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.43 Contents of request.

(a) A request for emergency action under section 204(e) of the Act shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such request shall be supported by appropriate information and data and shall include to the extent possible:

(1) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(2) The beneficiary country(ies) of origin of the allegedly injurious imports;

(3) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from the designated beneficiary country(ies) in increased quantities as compared with imports of the same product from the designated beneficiary country(ies) during a previous representative period of time (including a statement of why the period used should be considered to be representative);

(4) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from the beneficiary country(ies); and

(5) A statement indicating why emergency action would be warranted under section 204(e) of the Act (including all available evidence that the injury caused by the increased quantities of imports from the beneficiary country(ies) would be relieved by the suspension of duty-free treatment accorded under the Act).

(b) A copy of the petition and the supporting evidence filed with the United States International Trade Commission under Section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.44 Submission of recommendations by the Secretary of Agriculture.

If the Secretary has reason to believe that the perishable product(s) which is the subject of a petition under § 1504.43 of this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof,

to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.43 of this subpart, shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary within 14 days after the filing of the petition shall publish a notice of such determination and so advise the petitioner.

§ 1540.45 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of section 204(e) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Issued at Washington, DC this 19th day of March, 1993.

PART 1560—PROCEDURES TO MONITOR CANADIAN FRESH FRUIT AND VEGETABLE IMPORTS

Sec.

1560.1 Scope.
1560.2 Definitions.
1560.3 Determination of fresh fruit or vegetable.
1560.4 Calculation of data to support imposition of temporary duty.
1560.5 Calculation of data to support removal of temporary duty.

AUTHORITY: Secs. 105 and 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100–449 (102 Stat. 1855 and 1865–67).

SOURCE: 54 FR 1327, Jan. 13, 1989, unless otherwise noted.

§ 1560.1 Scope.

This part outlines the procedures that will be used by the Administrator of the Foreign Agricultural Service to monitor and inform the Secretary of Agriculture of data regarding the importation of fresh fruits and vegetables from Canada.

§ 1560.2 Definitions.

The following definitions shall be applicable to this part:

(a) *Administrator* means the Administrator of the Foreign Agricultural Service, United States Department of Agriculture.

(b) *Average Monthly Import Price* means the average unit value for all shipments of a particular Canadian fresh fruit or vegetable imported into the United States from Canada during a particular calendar month based on official data from the U.S. Customs Service and/or the Bureau of Census, and shall be calculated by dividing the total value of the fresh fruit or vegetable imported in that month by the total quantity of the fresh fruit or vegetable imported in that month.

(c) *Average Planted Acreage* means the average of the annual planted acreage in the U.S. for a particular fresh fruit or vegetable for the preceding five years excluding the years with the highest and lowest acreages based on available data from agencies within the United States Department of Agriculture and data from appropriate state agencies, as required.

(d) *Canadian fresh fruit or vegetable* means a fresh fruit or vegetable that is a product of Canada as determined in accordance with the rules of origin set forth in section 202 of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988.

(e) *Corresponding Five-Year Average Monthly Import Price* for a particular day means the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(f) *F.O.B. Point of Shipment Price in Canada* means the daily average of prices of a particular Canadian fresh fruit or vegetable imported into the United States from Canada that are reported to the U.S. Customs Service at the U.S. border as part of the official documentation accompanying such shipments less freight costs where applicable.

(g) *Fresh Fruit or Vegetable* means a fruit or vegetable determined in accordance with § 1560.3 within one of the HS headings.

(h) *HS heading* means any of the following tariff headings of the Harmonized System (HS) as modified by the description for each heading:

HS tariff heading	Description
07.01	Potatoes, fresh or chilled.
07.02	Tomatoes, fresh or chilled.
07.03	Onions, shallots, garlic, leeks, and other alliaceous vegetables, fresh or chilled.
07.04	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled.
07.05	Lettuce (lactica sativa) and chicory (cichorium spp.), fresh or chilled.
07.06	Carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled.
07.07	Cucumbers and gherkins, fresh or chilled.
07.08	Leguminous vegetables, shelled or unshelled, fresh or chilled.
07.09	Other vegetables (excluding truffles), fresh or chilled.
08.06.10	Grapes, fresh.
08.08.20	Pears and quinces, fresh.
08.09	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh.
08.10	Other fruit (excluding cranberries and blueberries), fresh.

(i) *Import Price* means the unit value based on data available from the U.S. Customs Service of a particular Canadian fresh fruit or vegetable imported into the U.S. from Canada taking into account any other relevant data, as necessary.

(j) *Secretary* means the Secretary of Agriculture.

(k) *United States* means the United States Customs Territory which includes the fifty states, the District of Columbia and Puerto Rico.

(l) *Wine Grape* means grapes of labrusca, vinifera or hybrid vinifera varieties used for making wine.

(m) *Working Day* means a day which falls on a Monday through Friday, excluding holidays observed by the United States Government and days in which the U.S. Customs Service is not operating.

§ 1560.3 Determination of fresh fruit or vegetable.

The specific group of articles that will be monitored as a particular fresh fruit or vegetable will be determined based on the practicability of monitoring at the eight digit subheading level of the Harmonized Tariff Schedule of the United States. The determination of practicability will be made by the Administrator taking into account: (a) The availability of reliable volume and price data on imports from Canada and data on U.S. planted acreage, (b) market differentiation for the group of articles, and (c) such other factors as the Administrator determines to be appropriate.

§ 1560.4 Calculation of data to support imposition of temporary duty.

The Administrator will inform the Secretary when the following conditions are met with respect to a particular fresh fruit or vegetable imported into the United States from Canada:

(a) If for each of five consecutive working days the import price of the fresh fruit or vegetable is below ninety percent of the corresponding five-year average monthly import price for such fresh fruit or vegetable excluding the years with the highest and lowest corresponding monthly import price; and

(b) The planted acreage in the United States for such fresh fruit or vegetable based on the most recent data available is no higher than the average planted acreage over the preceding five years excluding the years with the highest and lowest planted acreages. For the purposes of calculating any planted acreage increase attributed directly to a reduction in wine grape planted acreage existing on October 4, 1987 shall be excluded.

§ 1560.5 Calculation of data to support removal of temporary duty.

During the time a temporary duty on a particular fresh fruit or vegetable is imposed pursuant to section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, the Administrator will inform the Secretary if the F.O.B. point of shipment price in Canada of such fresh fruit or vegetable exceeds, for five consecutive working days, ninety percent of the corresponding five-year average monthly import price excluding the years with the highest and lowest average corresponding monthly import price, adjusted to an F.O.B. point of

shipment price, if necessary, for that fresh fruit or vegetable.

PART 1570—EXPORT BONUS PROGRAMS

Subpart A—Sunflowerseed Oil Assistance Program and Cottonseed Oil Assistance Program Criteria

Sec.
1570.10 General statement.
1570.20 Criteria.

Subpart B—SOAP and COAP Drawback Certification

1570.1100 Drawback certification.

SOURCE: 56 FR 42223, Aug. 27, 1991, unless otherwise noted.

Subpart A—Sunflowerseed Oil Assistance Program and Cottonseed Oil Assistance Program Criteria

AUTHORITY: 7 U.S.C. 5663.

§ 1570.10 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Sunflowerseed Oil Assistance Program (SOAP) and Cottonseed Oil Assistance Program (COAP) administered by the Foreign Agricultural Service (FAS). These criteria are interrelated and will be considered together in order to select eligible countries for SOAP and COAP initiatives which will best meet the programs' objective. The objective of the programs is to encourage the sale of additional quantities of sunflowerseed oil and cottonseed oil in world markets at competitive prices. Under the SOAP and the COAP, bonuses are made available by FAS to enable exporters to meet prevailing world prices for sunflowerseed oil and cottonseed oil in targeted destinations. In the operation of the SOAP and the COAP, FAS will make reasonable efforts to avoid the displacement of usual marketings of U.S. agricultural commodities.

§ 1570.20 Criteria.

The criteria considered by FAS in reviewing proposals for SOAP and COAP initiatives will include, but not be limited to, the following:

(a) The expected contribution which initiatives will make toward realizing U.S. agricultural export goals and, in particular, in developing, expanding, or maintaining markets for U.S. sunflowerseed and/or cottonseed oil;

(b) The subsidy requirements of proposed initiatives in relation to the sums made available to operate the programs in any given fiscal year; and

(c) The likelihood that sales facilitated by initiatives would have the unintended effect of displacing normal commercial sales of sunflowerseed and/or cottonseed oil.

Subpart B—SOAP and COAP Drawback Certification

AUTHORITY: 7 U.S.C. 5676.

§ 1570.1100 Drawback certification.

An offer submitted by an exporter to FAS for an export bonus under the SOAP or the COAP must contain, in addition to any other information required by FAS, a certification stating the following: ''None of the eligible commodity (sunflowerseed oil and/or cottonseed oil) has been or will be used as the basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) of any duty, tax, or fee imposed under Federal law on an imported commodity or product.'' This certification must be signed by the exporter, if the exporter is an individual, or by a partner or officer of the exporter, if the exporter is a partnership or a corporation, respectively. FAS will reject any offer that does not contain the prescribed certification.