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# Agriculture

# 7

## PARTS 1200 TO 1499

**Revised as of January 1, 1997**

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JANUARY 1, 1997

*With Ancillaries*

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*Cite this Code:* CFR

*To cite the regulations in this volume use title, part and section number. Thus,* 7 CFR 1200.1 *refers to title 7, part 1200, section 1.*

# Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

## LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

## HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, January 1, 1997), consult the ''List of CFR Sections Affected (LSA),'' which is issued monthly, and the ''Cumulative List of Parts Affected,'' which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

## EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

## OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

## OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1986, consult either the List of CFR Sections Affected, 1949–1963, 1964–1972, or 1973–1985, published in seven separate volumes. For the period beginning January 1, 1986, a ''List of CFR Sections Affected'' is published at the end of each CFR volume.

## INCORPORATION BY REFERENCE

*What is incorporation by reference?* Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

*What is a proper incorporation by reference?* The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

*What if the material incorporated by reference cannot be found?* If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, Washington DC 20408, or call (202) 523–4534.

## CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES

For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency's name appears at the top of odd–numbered pages.

For inquiries concerning CFR reference assistance, call 202–523–5227 or write to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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RICHARD L. CLAYPOOLE,
*Director,*
*Office of the Federal Register.*

*January 1, 1997.*

## THIS TITLE

Title 7—AGRICULTURE is composed of fifteen volumes. The parts in these volumes are arranged in the following order: parts 0–26, 27–52, 53–209, 210–299, 300–399, 400–699, 700–899, 900–999, 1000–1199, 1200–1499, 1500–1899, 1900–1939, 1940–1949, 1950–1999, and part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1997.

The Food and Consumer Service current regulations in the volume containing parts 210–299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing parts 400–699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing parts 900–999. All marketing agreements and orders for milk appear in the volume containing parts 1000–1199. Part 900—General Regulations is carried as a note in the volume containing parts 1000–1199, as a convenience to the user.

Redesignation tables appear in the Finding Aids section of the volumes containing parts 210–299 and parts 1500–1899.

For this volume, Christopher R. Choate was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

# Would you like to know...

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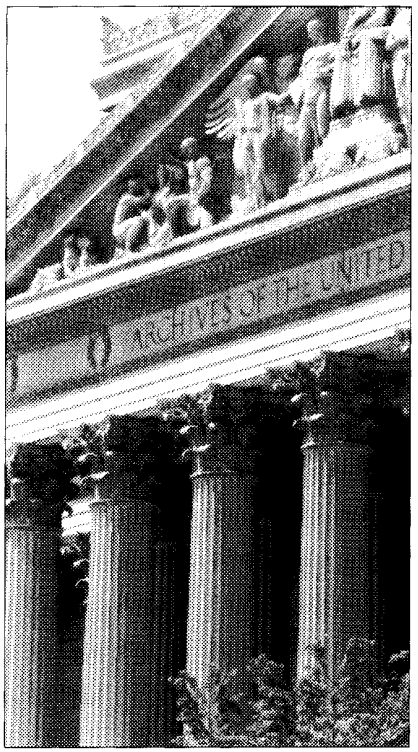

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# Title 7—Agriculture

(This book contains parts 1200 to 1499)

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SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE—(Continued):


*Part*

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CHAPTER XIV—Commodity Credit Corporation, Department of Agriculture ..... 1402

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# 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


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## 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—Cotton Research and Promotion Order

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AUTHORITY: 7 U.S.C. 2101–2118.

## 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 average prices received by U.S. farmers will be calculated annually. Such 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 $1.6931 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. | Conversion factor | Cents per kg |
|---|---|---|
| 5201001200 | 0 | 1.2874 |
| 5201001400 | 0 | 1.2874 |
| 5201001800 | 0 | 1.2874 |
| 5201002200 | 0 | 1.2874 |
| 5201002400 | 0 | 1.2874 |
| 5201002800 | 0 | 1.2874 |
| 5201003400 | 0 | 1.2874 |
| 5201003800 | 0 | 1.2874 |
| 5204110000 | 1.1111 | 1.4304 |
| 5204200000 | 1.1111 | 1.4304 |
| 5205111000 | 1.1111 | 1.4304 |
| 5205112000 | 1.1111 | 1.4304 |
| 5205121000 | 1.1111 | 1.4304 |
| 5205122000 | 1.1111 | 1.4304 |
| 5205131000 | 1.1111 | 1.4304 |
| 5205132000 | 1.1111 | 1.4304 |
| 5205141000 | 1.1111 | 1.4304 |
| 5205210000 | 1.1111 | 1.4304 |
| 5205220000 | 1.1111 | 1.4304 |
| 5205230000 | 1.1111 | 1.4304 |
| 5205240000 | 1.1111 | 1.4304 |
| 5205310000 | 1.1111 | 1.4304 |
| 5205320000 | 1.1111 | 1.4304 |
| 5205330000 | 1.1111 | 1.4304 |
| 5205340000 | 1.1111 | 1.4304 |
| 5205410000 | 1.1111 | 1.4304 |
| 5205420000 | 1.1111 | 1.4304 |
| 5205440000 | 1.1111 | 1.4304 |
| 5206120000 | 0.5556 | 0.7153 |
| 5206130000 | 0.5556 | 0.7153 |
| 5206140000 | 0.5556 | 0.7153 |
| 5206220000 | 0.5556 | 0.7153 |
| 5206230000 | 0.5556 | 0.7153 |
| 5206240000 | 0.5556 | 0.7153 |
| 5206310000 | 0.5556 | 0.7153 |
| 5207100000 | 1.1111 | 1.4304 |
| 5207900000 | 0.5556 | 0.7153 |
| 5208112020 | 1.1455 | 1.4747 |
| 5208112040 | 1.1455 | 1.4747 |
| 5208112090 | 1.1455 | 1.4747 |
| 5208114020 | 1.1455 | 1.4747 |
| 5208114060 | 1.1455 | 1.4747 |
| 5208114090 | 1.1455 | 1.4747 |
| 5208118090 | 1.1455 | 1.4747 |
| 5208124020 | 1.1455 | 1.4747 |
| 5208124040 | 1.1455 | 1.4747 |
| 5208124090 | 1.1455 | 1.4747 |
| 5208126020 | 1.1455 | 1.4747 |
| 5208126040 | 1.1455 | 1.4747 |
| 5208126060 | 1.1455 | 1.4747 |
| 5208126090 | 1.1455 | 1.4747 |
| 5208128020 | 1.1455 | 1.4747 |
| 5208128090 | 1.1455 | 1.4747 |
| 5208130000 | 1.1455 | 1.4747 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conversion factor | Cents per kg |
|---|---|---|
| 5208192020 | 1.1455 | 1.4747 |
| 5208192090 | 1.1455 | 1.4747 |
| 5208194020 | 1.1455 | 1.4747 |
| 5208194090 | 1.1455 | 1.4747 |
| 5208196020 | 1.1455 | 1.4747 |
| 5208196090 | 1.1455 | 1.4747 |
| 5208224040 | 1.1455 | 1.4747 |
| 5208224090 | 1.1455 | 1.4747 |
| 5208226020 | 1.1455 | 1.4747 |
| 5208226060 | 1.1455 | 1.4747 |
| 5208228020 | 1.1455 | 1.4747 |
| 5208230000 | 1.1455 | 1.4747 |
| 5208292020 | 1.1455 | 1.4747 |
| 5208292090 | 1.1455 | 1.4747 |
| 5208294090 | 1.1455 | 1.4747 |
| 5208296090 | 1.1455 | 1.4747 |
| 5208298020 | 1.1455 | 1.4747 |
| 5208312000 | 1.1455 | 1.4747 |
| 5208321000 | 1.1455 | 1.4747 |
| 5208323020 | 1.1455 | 1.4747 |
| 5208323040 | 1.1455 | 1.4747 |
| 5208323090 | 1.1455 | 1.4747 |
| 5208324020 | 1.1455 | 1.4747 |
| 5208324040 | 1.1455 | 1.4747 |
| 5208325020 | 1.1455 | 1.4747 |
| 5208330000 | 1.1455 | 1.4747 |
| 5208392020 | 1.1455 | 1.4747 |
| 5208392090 | 1.1455 | 1.4747 |
| 5208394090 | 1.1455 | 1.4747 |
| 5208396090 | 1.1455 | 1.4747 |
| 5208398020 | 1.1455 | 1.4747 |
| 5208412000 | 1.1455 | 1.4747 |
| 5208416000 | 1.1455 | 1.4747 |
| 5208418000 | 1.1455 | 1.4747 |
| 5208421000 | 1.1455 | 1.4747 |
| 5208423000 | 1.1455 | 1.4747 |
| 5208424000 | 1.1455 | 1.4747 |
| 5208425000 | 1.1455 | 1.4747 |
| 5208430000 | 1.1455 | 1.4747 |
| 5208492000 | 1.1455 | 1.4747 |
| 5208494020 | 1.1455 | 1.4747 |
| 5208494090 | 1.1455 | 1.4747 |
| 5208496010 | 1.1455 | 1.4747 |
| 5208496090 | 1.1455 | 1.4747 |
| 5208498090 | 1.1455 | 1.4747 |
| 5208512000 | 1.1455 | 1.4747 |
| 5208516060 | 1.1455 | 1.4747 |
| 5208518090 | 1.1455 | 1.4747 |
| 5208523020 | 1.1455 | 1.4747 |
| 5208523040 | 1.1455 | 1.4747 |
| 5208523090 | 1.1455 | 1.4747 |
| 5208524020 | 1.1455 | 1.4747 |
| 5208524040 | 1.1455 | 1.4747 |
| 5208524060 | 1.1455 | 1.4747 |
| 5208525020 | 1.1455 | 1.4747 |
| 5208530000 | 1.1455 | 1.4747 |
| 5208592020 | 1.1455 | 1.4747 |
| 5208592090 | 1.1455 | 1.4747 |
| 5208594090 | 1.1455 | 1.4747 |
| 5208596090 | 1.1455 | 1.4747 |
| 5209110020 | 1.1455 | 1.4747 |
| 5209110030 | 1.1455 | 1.4747 |
| 5209110090 | 1.1455 | 1.4747 |
| 5209120020 | 1.1455 | 1.4747 |
| 5209120040 | 1.1455 | 1.4747 |
| 5209190020 | 1.1455 | 1.4747 |
| 5209190040 | 1.1455 | 1.4747 |
| 5209190060 | 1.1455 | 1.4747 |
| 5209190090 | 1.1455 | 1.4747 |
| 5209210090 | 1.1455 | 1.4747 |
| 5209220020 | 1.1455 | 1.4747 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conversion factor | Cents per kg |
|---|---|---|
| 5209220040 | 1.1455 | 1.4747 |
| 5209290040 | 1.1455 | 1.4747 |
| 5209290090 | 1.1455 | 1.4747 |
| 5209313000 | 1.1455 | 1.4747 |
| 5209316020 | 1.1455 | 1.4747 |
| 5209316030 | 1.1455 | 1.4747 |
| 5209316050 | 1.1455 | 1.4747 |
| 5209316090 | 1.1455 | 1.4747 |
| 5209320020 | 1.1455 | 1.4747 |
| 5209320040 | 1.1455 | 1.4747 |
| 5209390020 | 1.1455 | 1.4747 |
| 5209390040 | 1.1455 | 1.4747 |
| 5209390060 | 1.1455 | 1.4747 |
| 5209390080 | 1.1455 | 1.4747 |
| 5209390090 | 1.1455 | 1.4747 |
| 5209413000 | 1.1455 | 1.4747 |
| 5209416020 | 1.1455 | 1.4747 |
| 5209416040 | 1.1455 | 1.4747 |
| 5209420020 | 1.0309 | 1.3272 |
| 5209420040 | 1.0309 | 1.3272 |
| 5209430030 | 1.1455 | 1.4747 |
| 5209430050 | 1.1455 | 1.4747 |
| 5209490020 | 1.1455 | 1.4747 |
| 5209490090 | 1.1455 | 1.4747 |
| 5209516030 | 1.1455 | 1.4747 |
| 5209516050 | 1.1455 | 1.4747 |
| 5209520020 | 1.1455 | 1.4747 |
| 5209590020 | 1.1455 | 1.4747 |
| 5209590040 | 1.1455 | 1.4747 |
| 5209590090 | 1.6873 | 1.8848 |
| 5210114020 | 0.6873 | 0.8848 |
| 5210114040 | 0.6873 | 0.8848 |
| 5210116020 | 0.6873 | 0.8848 |
| 5210116040 | 0.6873 | 0.8848 |
| 5210116060 | 0.6873 | 0.8848 |
| 5210118020 | 0.6873 | 0.8848 |
| 5210120000 | 0.6873 | 0.8848 |
| 5210192090 | 0.6873 | 0.8848 |
| 5210214040 | 0.6873 | 0.8848 |
| 5210216020 | 0.6873 | 0.8848 |
| 5210216060 | 0.6873 | 0.8848 |
| 5210218020 | 0.6873 | 0.8848 |
| 5210314020 | 0.6873 | 0.8848 |
| 5210314040 | 0.6873 | 0.8848 |
| 5210316020 | 0.6873 | 0.8848 |
| 5210318020 | 0.6873 | 0.8848 |
| 5210414000 | 0.6873 | 0.8848 |
| 5210416000 | 0.6873 | 0.8848 |
| 5210418000 | 0.6873 | 0.8848 |
| 5210498090 | 0.6873 | 0.8848 |
| 5210514040 | 0.6873 | 0.8848 |
| 5210516020 | 0.6873 | 0.8848 |
| 5210516040 | 0.6873 | 0.8848 |
| 5210516060 | 0.6873 | 0.8848 |
| 5211110090 | 0.6873 | 0.8848 |
| 5211120020 | 0.6873 | 0.8848 |
| 5211190020 | 0.6873 | 0.8848 |
| 5211190060 | 0.6873 | 0.8848 |
| 5211210030 | 0.4165 | 0.5362 |
| 5211210050 | 0.6873 | 0.8848 |
| 5211290090 | 0.6873 | 0.8848 |
| 5211320020 | 0.6873 | 0.8848 |
| 5211390040 | 0.6873 | 0.8848 |
| 5211390060 | 0.6873 | 0.8848 |
| 5211490020 | 0.6873 | 0.8848 |
| 5211490090 | 0.6873 | 0.8848 |
| 5211590020 | 0.6873 | 0.8848 |
| 5212146090 | 0.9164 | 0.1798 |
| 5212156020 | 0.9164 | 0.1798 |
| 5212216090 | 0.9164 | 0.1798 |
| 5309214010 | 0.2864 | 0.3687 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conversion factor | Cents per kg |
|---|---|---|
| 5309214090 | 0.2864 | 0.3687 |
| 5309294010 | 0.2864 | 0.3687 |
| 5311004020 | 0.9164 | 1.1798 |
| 5407810010 | 0.5727 | 0.7373 |
| 5407810030 | 0.5727 | 0.7373 |
| 5407912020 | 0.4009 | 0.5161 |
| 5408312020 | 0.4009 | 0.5161 |
| 5408329020 | 0.4009 | 0.5161 |
| 5408349020 | 0.4009 | 0.5161 |
| 5408349090 | 0.4009 | 0.5161 |
| 5509530030 | 0.5556 | 0.7153 |
| 5509530060 | 0.5556 | 0.7153 |
| 5513110020 | 0.4009 | 0.5161 |
| 5513110040 | 0.4009 | 0.5161 |
| 5513110060 | 0.4009 | 0.5161 |
| 5513110090 | 0.4009 | 0.5161 |
| 5513120000 | 0.4009 | 0.5161 |
| 5513130020 | 0.4009 | 0.5161 |
| 5513210020 | 0.4009 | 0.5161 |
| 5513310000 | 0.4009 | 0.5161 |
| 5514120020 | 0.4009 | 0.5161 |
| 5516420060 | 0.4009 | 0.5161 |
| 5516910060 | 0.4009 | 0.5161 |
| 5516930090 | 0.4009 | 0.5161 |
| 5601210010 | 1.1455 | 1.4747 |
| 5601210090 | 1.1455 | 1.4747 |
| 5601300000 | 1.1455 | 1.4747 |
| 5602109090 | 0.5727 | 0.7373 |
| 5602290000 | 1.1455 | 1.4747 |
| 5602906000 | 0.526 | 0.6772 |
| 5604900000 | 0.5556 | 0.7153 |
| 5607902000 | 0.8889 | 1.1444 |
| 5608901000 | 1.1111 | 1.4304 |
| 5608902300 | 1.1111 | 1.4304 |
| 5609001000 | 1.1111 | 1.4304 |
| 5609004000 | 0.5556 | 0.7153 |
| 5701104000 | 0.0556 | 0.0716 |
| 5701109000 | 0.1111 | 0.143 |
| 5701901010 | 1.0444 | 1.3446 |
| 5702109020 | 1.1 | 1.4161 |
| 5702312000 | 0.0778 | 0.1002 |
| 5702411000 | 0.0722 | 0.093 |
| 5702412000 | 0.0778 | 0.1002 |
| 5702421000 | 0.0778 | 0.1002 |
| 5702913000 | 0.0889 | 0.1144 |
| 5702991010 | 1.1111 | 1.4304 |
| 5702991090 | 1.1111 | 1.4304 |
| 5703900000 | 0.4489 | 0.5779 |
| 5801210000 | 1.1455 | 1.4747 |
| 5801230000 | 1.1455 | 1.4747 |
| 5801250010 | 1.1455 | 1.4747 |
| 5801250020 | 1.1455 | 1.4747 |
| 5801260020 | 1.1455 | 1.4747 |
| 5802190000 | 1.1455 | 1.4747 |
| 5802300030 | 0.5727 | 0.7373 |
| 5804291000 | 1.1455 | 1.4747 |
| 5806200010 | 0.3534 | 0.455 |
| 5806200090 | 0.3534 | 0.455 |
| 5806310000 | 1.1455 | 1.4747 |
| 5806400000 | 0.4296 | 0.5531 |
| 5808107000 | 0.5727 | 0.7373 |
| 5808900010 | 0.5727 | 0.7373 |
| 5811002000 | 1.1455 | 1.4747 |
| 6001106000 | 1.1455 | 1.4747 |
| 6001210000 | 0.8591 | 1.106 |
| 6001220000 | 0.2864 | 0.3687 |
| 6001910010 | 0.8591 | 1.106 |
| 6001910020 | 0.8591 | 1.106 |
| 6001920020 | 0.2864 | 0.3687 |
| 6001920030 | 0.2864 | 0.3687 |
| 6001920040 | 0.2864 | 0.3687 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conversion factor | Cents per kg |
|---|---|---|
| 6002203000 | 0.8681 | 1.1176 |
| 6002206000 | 0.2894 | 0.3726 |
| 6002420000 | 0.8681 | 1.1176 |
| 6002430010 | 0.2894 | 0.3726 |
| 6002430080 | 0.2894 | 0.3726 |
| 6002921000 | 1.1574 | 1.49 |
| 6002930040 | 0.1157 | 0.149 |
| 6002930080 | 0.1157 | 0.149 |
| 6101200010 | 1.0094 | 1.2995 |
| 6101200020 | 1.0094 | 1.2995 |
| 6102200010 | 1.0094 | 1.2995 |
| 6102200020 | 1.0094 | 1.2995 |
| 6103421020 | 0.8806 | 1.1337 |
| 6103421040 | 0.8806 | 1.1337 |
| 6103421050 | 0.8806 | 1.1337 |
| 6103421070 | 0.8806 | 1.1337 |
| 6103431520 | 0.2516 | 0.3239 |
| 6103431540 | 0.2516 | 0.3239 |
| 6103431550 | 0.2516 | 0.3239 |
| 6103431570 | 0.2516 | 0.3239 |
| 6104220040 | 0.9002 | 1.1589 |
| 6104220060 | 0.9002 | 1.1589 |
| 6104320000 | 0.9207 | 1.1853 |
| 6104420010 | 0.9002 | 1.1589 |
| 6104420020 | 0.9002 | 1.1589 |
| 6104520010 | 0.9312 | 1.1988 |
| 6104520020 | 0.9312 | 1.1988 |
| 6104622010 | 0.8806 | 1.1337 |
| 6104622015 | 0.8806 | 1.1337 |
| 6104622025 | 0.8806 | 1.1337 |
| 6104622030 | 0.8806 | 1.1337 |
| 6104622060 | 0.8806 | 1.1337 |
| 6104632010 | 0.3774 | 0.4859 |
| 6104632025 | 0.3774 | 0.4859 |
| 6104632030 | 0.3774 | 0.4859 |
| 6104632060 | 0.3774 | 0.4859 |
| 6104692030 | 0.3858 | 0.4967 |
| 6105100010 | 0.985 | 1.2681 |
| 6105100020 | 0.985 | 1.2681 |
| 6105100030 | 0.985 | 1.2681 |
| 6105202010 | 0.3078 | 0.3963 |
| 6105202030 | 0.3078 | 0.3963 |
| 6106100010 | 0.985 | 1.2681 |
| 6106100020 | 0.985 | 1.2681 |
| 6106100030 | 0.985 | 1.2681 |
| 6106202010 | 0.3078 | 0.3963 |
| 6106202030 | 0.3078 | 0.3963 |
| 6107110010 | 1.1322 | 1.4576 |
| 6107110020 | 1.1322 | 1.4576 |
| 6107120010 | 0.5032 | 0.6478 |
| 6107210010 | 0.8806 | 1.1337 |
| 6107220015 | 0.3774 | 0.4859 |
| 6107220025 | 0.3774 | 0.4859 |
| 6107910040 | 1.2581 | 1.6197 |
| 6108210010 | 1.2445 | 1.6022 |
| 6108210020 | 1.2445 | 1.6022 |
| 6108310010 | 1.1201 | 1.442 |
| 6108310020 | 1.1201 | 1.442 |
| 6108320010 | 0.2489 | 0.3204 |
| 6108320015 | 0.2489 | 0.3204 |
| 6108320025 | 0.2489 | 0.3204 |
| 6108910005 | 1.2445 | 1.6022 |
| 6108910015 | 1.2445 | 1.6022 |
| 6108910025 | 1.2445 | 1.6022 |
| 6108910030 | 1.2445 | 1.6022 |
| 6108920030 | 0.2489 | 0.3204 |
| 6109100005 | 0.9956 | 1.2817 |
| 6109100007 | 0.9956 | 1.2817 |
| 6109100009 | 0.9956 | 1.2817 |
| 6109100012 | 0.9956 | 1.2817 |
| 6109100014 | 0.9956 | 1.2817 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conversion factor | Cents per kg |
|---|---|---|
| 6109100018 | 0.9956 | 1.2817 |
| 6109100023 | 0.9956 | 1.2817 |
| 6109100027 | 0.9956 | 1.2817 |
| 6109100037 | 0.9956 | 1.2817 |
| 6109100040 | 0.9956 | 1.2817 |
| 6109100045 | 0.9956 | 1.2817 |
| 6109100060 | 0.9956 | 1.2817 |
| 6109100065 | 0.9956 | 1.2817 |
| 6109100070 | 0.9956 | 1.2817 |
| 6109901007 | 0.3111 | 0.4005 |
| 6109901009 | 0.3111 | 0.4005 |
| 6109901049 | 0.3111 | 0.4005 |
| 6109901050 | 0.3111 | 0.4005 |
| 6109901060 | 0.3111 | 0.4005 |
| 6109901065 | 0.3111 | 0.4005 |
| 6109901090 | 0.3111 | 0.4005 |
| 6110202005 | 1.1837 | 1.5239 |
| 6110202010 | 1.1837 | 1.5239 |
| 6110202015 | 1.1837 | 1.5239 |
| 6110202020 | 1.1837 | 1.5239 |
| 6110202025 | 1.1837 | 1.5239 |
| 6110202030 | 1.1837 | 1.5239 |
| 6110202035 | 1.1837 | 1.5239 |
| 6110202040 | 1.1574 | 1.49 |
| 6110202045 | 1.1574 | 1.49 |
| 6110202065 | 1.1574 | 1.49 |
| 6110202075 | 1.1574 | 1.49 |
| 6110909022 | 0.263 | 0.3386 |
| 6110909024 | 0.263 | 0.3386 |
| 6110909030 | 0.3946 | 0.508 |
| 6110909040 | 0.263 | 0.3386 |
| 6110909042 | 0.263 | 0.3386 |
| 6111201000 | 1.2581 | 1.6197 |
| 6111202000 | 1.2581 | 1.6197 |
| 6111203000 | 1.0064 | 1.2956 |
| 6111205000 | 1.0064 | 1.2956 |
| 6111206010 | 1.0064 | 1.2956 |
| 6111206020 | 1.0064 | 1.2956 |
| 6111206030 | 1.0064 | 1.2956 |
| 6111206040 | 1.0064 | 1.2956 |
| 6111305020 | 0.2516 | 0.3239 |
| 6111305040 | 0.2516 | 0.3239 |
| 6112110050 | 0.7548 | 0.9717 |
| 6112120010 | 0.2516 | 0.3239 |
| 6112120030 | 0.2516 | 0.3239 |
| 6112120040 | 0.2516 | 0.3239 |
| 6112120050 | 0.2516 | 0.3239 |
| 6112120060 | 0.2516 | 0.3239 |
| 6112390010 | 1.1322 | 1.4576 |
| 6112490010 | 0.9435 | 1.2147 |
| 6114200005 | 0.9002 | 1.1589 |
| 6114200010 | 0.9002 | 1.1589 |
| 6114200015 | 0.9002 | 1.1589 |
| 6114200020 | 1.286 | 1.6556 |
| 6114200040 | 0.9002 | 1.1589 |
| 6114200046 | 0.9002 | 1.1589 |
| 6114200052 | 0.9002 | 1.1589 |
| 6114200060 | 0.9002 | 1.1589 |
| 6114301010 | 0.2572 | 0.3311 |
| 6114301020 | 0.2572 | 0.3311 |
| 6114303030 | 0.2572 | 0.3311 |
| 6115198010 | 1.0417 | 1.3411 |
| 6115929000 | 1.0417 | 1.3411 |
| 6115936020 | 0.2315 | 0.298 |
| 6116101300 | 0.3655 | 0.4705 |
| 6116101720 | 0.8528 | 1.0979 |
| 6116926420 | 1.0965 | 1.4116 |
| 6116926430 | 1.2183 | 1.5684 |
| 6116926440 | 1.0965 | 1.4116 |
| 6116928800 | 1.0965 | 1.4116 |
| 6117809010 | 0.9747 | 1.2548 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conversion factor | Cents per kg |
|---|---|---|
| 6117809040 | 0.3655 | 0.4705 |
| 6201121000 | 0.948 | 1.2205 |
| 6201122010 | 0.8953 | 1.1526 |
| 6201122050 | 0.6847 | 0.8815 |
| 6201122060 | 0.6847 | 0.8815 |
| 6201134030 | 0.2633 | 0.339 |
| 6201921000 | 0.9267 | 1.193 |
| 6201921500 | 1.1583 | 1.4912 |
| 6201922010 | 1.0296 | 1.3255 |
| 6201922021 | 1.2871 | 1.657 |
| 6201922031 | 1.2871 | 1.657 |
| 6201922041 | 1.2871 | 1.657 |
| 6201922051 | 1.0296 | 1.3255 |
| 6201922061 | 1.0296 | 1.3255 |
| 6201931000 | 0.3089 | 0.3977 |
| 6201933511 | 0.2574 | 0.3314 |
| 6201933521 | 0.2574 | 0.3314 |
| 6201999060 | 0.2574 | 0.3314 |
| 6202121000 | 0.9372 | 1.2066 |
| 6202122010 | 1.1064 | 1.4244 |
| 6202122025 | 1.3017 | 1.6758 |
| 6202122050 | 0.8461 | 1.0893 |
| 6202122060 | 0.8461 | 1.0893 |
| 6202134005 | 0.2664 | 0.343 |
| 6202134020 | 0.333 | 0.4287 |
| 6202921000 | 1.0413 | 1.3406 |
| 6202921500 | 1.0413 | 1.3406 |
| 6202922026 | 1.3017 | 1.6758 |
| 6202922061 | 1.0413 | 1.3406 |
| 6202922071 | 1.0413 | 1.3406 |
| 6202931000 | 0.3124 | 0.4022 |
| 6202935011 | 0.2603 | 0.3351 |
| 6202935021 | 0.2603 | 0.3351 |
| 6203122010 | 0.1302 | 0.1676 |
| 6203221000 | 1.3017 | 1.6758 |
| 6203322010 | 1.2366 | 1.592 |
| 6203322040 | 1.2366 | 1.592 |
| 6203332010 | 0.1302 | 0.1676 |
| 6203392010 | 1.1715 | 1.5082 |
| 6203399060 | 0.2603 | 0.3351 |
| 6203422010 | 0.9961 | 1.2824 |
| 6203422025 | 0.9961 | 1.2824 |
| 6203422050 | 0.9961 | 1.2824 |
| 6203422090 | 0.9961 | 1.2824 |
| 6203424005 | 1.2451 | 1.6029 |
| 6203424010 | 1.2451 | 1.6029 |
| 6203424015 | 0.9961 | 1.2824 |
| 6203424020 | 1.2451 | 1.6029 |
| 6203424025 | 1.2451 | 1.6029 |
| 6203424030 | 1.2451 | 1.6029 |
| 6203424035 | 1.2451 | 1.6029 |
| 6203424040 | 0.9961 | 1.2824 |
| 6203424045 | 0.9961 | 1.2824 |
| 6203424050 | 0.9238 | 1.1893 |
| 6203424055 | 0.9238 | 1.1893 |
| 6203424060 | 0.9238 | 1.1893 |
| 6203431500 | 0.1245 | 0.1603 |
| 6203434010 | 0.1232 | 0.1586 |
| 6203434020 | 0.1232 | 0.1586 |
| 6203434030 | 0.1232 | 0.1586 |
| 6203434040 | 0.1232 | 0.1586 |
| 6203498045 | 0.249 | 0.3206 |
| 6204132010 | 0.1302 | 0.1676 |
| 6204192000 | 0.1302 | 0.1676 |
| 6204198090 | 0.2603 | 0.3351 |
| 6204221000 | 1.3017 | 1.6758 |
| 6204223030 | 1.0413 | 1.3406 |
| 6204223040 | 1.0413 | 1.3406 |
| 6204223050 | 1.0413 | 1.3406 |
| 6204223060 | 1.0413 | 1.3406 |
| 6204223065 | 1.0413 | 1.3406 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conversion factor | Cents per kg |
|---|---|---|
| 6204292040 | 0.3254 | 0.4189 |
| 6204322010 | 1.2366 | 1.592 |
| 6204322030 | 1.0413 | 1.3406 |
| 6204322040 | 1.0413 | 1.3406 |
| 6204423010 | 1.2728 | 1.6386 |
| 6204423030 | 0.9546 | 1.229 |
| 6204423040 | 0.9546 | 1.229 |
| 6204423050 | 0.9546 | 1.229 |
| 6204423060 | 0.9546 | 1.229 |
| 6204522010 | 1.2654 | 1.6291 |
| 6204522030 | 1.2654 | 1.6291 |
| 6204522040 | 1.2654 | 1.6291 |
| 6204522070 | 1.0656 | 1.3719 |
| 6204522080 | 1.0656 | 1.3719 |
| 6204533010 | 0.2664 | 0.343 |
| 6204594060 | 0.2664 | 0.343 |
| 6204622010 | 0.9961 | 1.2824 |
| 6204622025 | 0.9961 | 1.2824 |
| 6204622050 | 0.9961 | 1.2824 |
| 6204624005 | 1.2451 | 1.6029 |
| 6204624010 | 1.2451 | 1.6029 |
| 6204624020 | 0.9961 | 1.2824 |
| 6204624025 | 1.2451 | 1.6029 |
| 6204624030 | 1.2451 | 1.6029 |
| 6204624035 | 1.2451 | 1.6029 |
| 6204624040 | 1.2451 | 1.6029 |
| 6204624045 | 0.9961 | 1.2824 |
| 6204624050 | 0.9961 | 1.2824 |
| 6204624055 | 0.9854 | 1.2686 |
| 6204624060 | 0.9854 | 1.2686 |
| 6204624065 | 0.9854 | 1.2686 |
| 6204633510 | 0.2546 | 0.3278 |
| 6204633530 | 0.2546 | 0.3278 |
| 6204633532 | 0.2437 | 0.3137 |
| 6204633540 | 0.2437 | 0.3137 |
| 6204692510 | 0.249 | 0.3206 |
| 6204692540 | 0.2437 | 0.3137 |
| 6204699044 | 0.249 | 0.3206 |
| 6204699046 | 0.249 | 0.3206 |
| 6204699050 | 0.249 | 0.3206 |
| 6205202015 | 0.9961 | 1.2824 |
| 6205202020 | 0.9961 | 1.2824 |
| 6205202025 | 0.9961 | 1.2824 |
| 6205202030 | 0.9961 | 1.2824 |
| 6205202035 | 1.1206 | 1.4427 |
| 6205202046 | 0.9961 | 1.2824 |
| 6205202050 | 0.9961 | 1.2824 |
| 6205202060 | 0.9961 | 1.2824 |
| 6205202065 | 0.9961 | 1.2824 |
| 6205202070 | 0.9961 | 1.2824 |
| 6205202075 | 0.9961 | 1.2824 |
| 6205302010 | 0.3113 | 0.4008 |
| 6205302030 | 0.3113 | 0.4008 |
| 6205302040 | 0.3113 | 0.4008 |
| 6205302050 | 0.3113 | 0.4008 |
| 6205302070 | 0.3113 | 0.4008 |
| 6205302080 | 0.3113 | 0.4008 |
| 6206100040 | 0.1245 | 0.1603 |
| 6206303010 | 0.9961 | 1.2824 |
| 6206303020 | 0.9961 | 1.2824 |
| 6206303030 | 0.9961 | 1.2824 |
| 6206303040 | 0.9961 | 1.2824 |
| 6206303050 | 0.9961 | 1.2824 |
| 6206303060 | 0.9961 | 0.2824 |
| 6206403010 | 0.3113 | 0.4008 |
| 6206403030 | 0.3113 | 0.4008 |
| 6206900040 | 0.249 | 0.3206 |
| 6207110000 | 1.0852 | 1.3971 |
| 6207199010 | 0.3617 | 0.4657 |
| 6207210010 | 1.1085 | 1.4271 |
| 6297210030 | 1.1085 | 1.4271 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conversion factor | Cents per kg |
|---|---|---|
| 6207220000 | 0.3695 | 0.4757 |
| 6207911000 | 1.1455 | 1.4747 |
| 6207913010 | 1.1455 | 1.4747 |
| 6207913020 | 1.1455 | 1.4747 |
| 6208210010 | 1.0583 | 1.3625 |
| 6208210020 | 1.0583 | 1.3625 |
| 6208220000 | 0.1245 | 0.1603 |
| 6208911010 | 1.1455 | 1.4747 |
| 6208911020 | 1.1455 | 1.4747 |
| 6208913010 | 1.1455 | 1.4747 |
| 6209201000 | 1.1577 | 1.4904 |
| 6209203000 | 0.9749 | 1.2551 |
| 6209205030 | 0.9749 | 1.2551 |
| 6209205035 | 0.9749 | 1.2551 |
| 6209205040 | 1.2186 | 1.5688 |
| 6209205045 | 0.9749 | 1.2551 |
| 6209205050 | 0.9749 | 1.2551 |
| 6209303020 | 0.2463 | 0.3171 |
| 6209303040 | 0.2463 | 0.3171 |
| 6210109010 | 0.2291 | 0.2949 |
| 6210403000 | 0.0391 | 0.0503 |
| 6210405020 | 0.4556 | 0.5865 |
| 6211111010 | 0.1273 | 0.1639 |
| 6211111020 | 0.1273 | 0.1639 |
| 6211118010 | 1.1455 | 1.4747 |
| 6211118020 | 1.1455 | 1.4747 |
| 6211320007 | 0.8461 | 1.0893 |
| 6211320010 | 1.0413 | 1.3406 |
| 6211320015 | 1.0413 | 1.3406 |
| 6211320030 | 0.9763 | 1.2569 |
| 6211320060 | 0.9763 | 1.2569 |
| 6211320070 | 0.9763 | 1.2569 |
| 6211330010 | 0.3254 | 0.4189 |
| 6211330030 | 0.3905 | 0.5027 |
| 6211330035 | 0.3905 | 0.5027 |
| 6211330040 | 0.3905 | 0.5027 |
| 6211420010 | 1.0413 | 1.3406 |
| 6211420020 | 1.0413 | 1.3406 |
| 6211420025 | 1.1715 | 1.5082 |
| 6211420060 | 1.0413 | 1.3406 |
| 6211420070 | 1.1715 | 1.5082 |
| 6211430010 | 0.2603 | 0.3351 |
| 6211430030 | 0.2603 | 0.3351 |
| 6211430040 | 0.2603 | 0.3351 |
| 6211430050 | 0.2603 | 0.3351 |
| 6211430060 | 0.2603 | 0.3351 |
| 6211430066 | 0.2603 | 0.3351 |
| 6212105020 | 0.2412 | 0.3105 |
| 6212109010 | 0.9646 | 1.2418 |
| 6212109020 | 0.2412 | 0.3105 |
| 6212200020 | 0.3014 | 0.388 |
| 6212900030 | 0.1929 | 0.2483 |
| 6213201000 | 1.1809 | 1.5203 |
| 6213202000 | 1.0628 | 1.3682 |
| 6213901000 | 0.4724 | 0.6082 |
| 6214900010 | 0.9043 | 1.1642 |
| 6216000800 | 0.2351 | 0.3027 |
| 6216001720 | 0.6752 | 0.8693 |
| 6216003800 | 1.2058 | 1.5523 |
| 6216004100 | 1.2058 | 1.5523 |
| 6217109010 | 1.0182 | 1.3108 |
| 6217109030 | 0.2546 | 0.3278 |
| 6301300010 | 0.8766 | 1.1285 |
| 6301300020 | 0.8766 | 1.1285 |
| 6302100010 | 1.1689 | 1.5048 |
| 6302215010 | 0.8182 | 1.0534 |
| 6302215020 | 0.8182 | 1.0534 |
| 6302217010 | 1.1689 | 1.5048 |
| 6302219010 | 0.8182 | 1.0534 |
| 6302217020 | 1.1689 | 1.5048 |
| 6302219020 | 0.8182 | 1.0534 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conversion factor | Cents per kg |
|---|---|---|
| 6302217050 | 1.1689 | 1.5048 |
| 6302219050 | 0.8182 | 1.0534 |
| 6302222010 | 0.4091 | 0.5267 |
| 6302222020 | 0.4091 | 0.5267 |
| 6302313010 | 0.8182 | 1.0534 |
| 6302313050 | 1.1689 | 1.5048 |
| 6302315050 | 0.8182 | 1.0534 |
| 6302317010 | 1.1689 | 1.5048 |
| 6302317020 | 1.1689 | 1.5048 |
| 6302317040 | 1.1689 | 1.5048 |
| 6302317050 | 1.1689 | 1.5048 |
| 6302319010 | 0.8182 | 1.0534 |
| 6302319020 | 0.8182 | 1.0534 |
| 6302319040 | 0.8182 | 1.0534 |
| 6302319050 | 0.8182 | 1.0534 |
| 6302322020 | 0.4091 | 0.5267 |
| 6302322040 | 0.4091 | 0.5267 |
| 6302402010 | 0.9935 | 1.279 |
| 6302511000 | 0.5844 | 0.7524 |
| 6302512000 | 0.8766 | 1.1285 |
| 6302513000 | 0.5844 | 0.7524 |
| 6302514000 | 0.8182 | 1.0534 |
| 6302600010 | 1.1689 | 1.5048 |
| 6302600020 | 1.052 | 1.3543 |
| 6302600030 | 1.052 | 1.3543 |
| 6302910005 | 1.052 | 1.3543 |
| 6302910015 | 1.1689 | 1.5048 |
| 6302910025 | 1.052 | 1.3543 |
| 6302910035 | 1.052 | 1.3543 |
| 6302910045 | 1.052 | 1.3543 |
| 6302910050 | 1.052 | 1.3543 |
| 6302910060 | 1.052 | 1.3543 |
| 6303110000 | 0.9448 | 1.2163 |
| 6303910000 | 0.6429 | 0.8277 |
| 6304111000 | 1.0629 | 1.3684 |
| 6304190500 | 1.052 | 1.3543 |
| 6304191000 | 1.1689 | 1.5048 |
| 6304191500 | 0.4091 | 0.5267 |
| 6304192000 | 0.4091 | 0.5267 |
| 6304910020 | 0.9351 | 1.2038 |
| 6304920000 | 0.9351 | 1.2038 |
| 6505901540 | 1.181 | 1.5204 |
| 6505902060 | 0.9935 | 1.279 |
| 6505902545 | 0.5844 | 0.7524 |

(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 articles assembled abroad in whole or in part of fabricated components, produced in the United States which;

(i) were exported from the U.S. in condition ready for assembly without further fabrication,

(ii) have not lost their physical identity in such articles by change in form, shape or otherwise, and

(iii) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process shall not be subject to assessments under this subpart. The specific HTS classifications affected under this paragraph are 9802.00.8010, 9802.00.8040, and 9802.00.8060.

(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]

### § 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 90 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]

## 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

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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]

### § 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 hold or cause to be held a meeting or meetings of producers in the producing sections or States each year to nominate members for the Board. 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) Nominations for importer member positions to the Board shall be obtained from potato or potato product importer associations or organizations. 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 and potato product importers; and

(5) Other relevant information as may be warranted.

(c) Such meetings shall be well publicized with notice given to producers, importers, and the Secretary at least 10 days prior to each meeting.

(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]

### §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.

The procedure for conducting the Board's meetings shall be in accordance with the bylaws adopted by the Board on June 7, 1972, which are hereby approved.

### § 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).

(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 |
| 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 handler reports shall contain the following information:

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

(ii) Period covered by report;

(iii) Total quantity of potatoes determined as assessable during the reporting period, 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.

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

### § 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

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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.

### § 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

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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.

# PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

## Subpart—Watermelon Research and Promotion Plan

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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 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

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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 | No. of members |
|---|---|
| Illinois | 4 |
| Iowa | 4 |
| Minnesota | 3 |
| Indiana | 3 |
| Missouri | 3 |

| Unit | No. of members |
|---|---|
| Ohio | 3 |
| Arkansas | 3 |
| Nebraska | 3 |
| Mississippi | 2 |
| Kansas | 2 |
| Louisiana | 2 |
| South Dakota | 2 |
| Tennessee | 2 |
| North Carolina | 2 |
| Kentucky | 2 |
| Michigan | 2 |
| Virginia | 2 |
| Maryland | 2 |
| Wisconsin | 2 |
| Georgia | 1 |
| South Carolina | 1 |
| Alabama | 1 |
| North Dakota | 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, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, 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]

### § 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.]

**§ 1220.315 Certification of non-producer status for certain transactions.**

(a) A person marketing soybeans, processed soybeans, or soybean products on which an assessment has been collected may claim non-producer status and shall not be required to pay an assessment if such person certifies to the purchaser that the assessment has been collected and remitted or will be remitted in a timely fashion.

(b) Each person claiming nonproducer status pursuant to this subpart shall provide purchasers with a Statement of Certification of Nonproducer Status on a form approved by the Board and the Secretary. A Statement of Certification of Non-Producer Status form shall be required for each transaction except that one such form, if approved by the Board, may be used to cover all transactions during a specified period not to exceed 12 consecutive months. The Board is authorized to approve a stamp process for providing such certification on invoices or other methods of such certification upon individual written requests. Forms and information on requirements for stamps and other methods of certification can be obtained from the Board.

(c) A copy of the Statement of certification of Non-Producer Status shall be forwarded, upon request, by the subsequent purchasers to the Qualified State Soybean Board or the Board.

**§§ 1220.330–1220.332 [Reserved]**

## Subparts C–F—[Reserved]

# PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

## Subpart A—Pork Promotion, Research, and Consumer Information Order

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**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]

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 | .27 | .595242 |
| 0203.12.1010 | .27 | .595242 |
| 0203.12.1020 | .27 | .595242 |
| 0203.12.9010 | .27 | .595242 |
| 0203.12.9020 | .27 | .595242 |
| 0203.19.2010 | .31 | .683426 |
| 0203.19.2090 | .31 | .683426 |
| 0203.19.4010 | .27 | .595242 |
| 0203.19.4090 | .27 | .595242 |
| 0203.21.0000 | .27 | .595242 |
| 0203.22.1000 | .27 | .595242 |
| 0203.22.9000 | .27 | .595242 |
| 0203.29.2000 | .31 | .683426 |
| 0203.29.4000 | .27 | .595242 |
| 0206.30.0000 | .27 | .595242 |
| 0206.41.0000 | .27 | .595242 |
| 0206.49.0000 | .27 | .595242 |
| 0210.11.0010 | .27 | .595242 |
| 0210.11.0020 | .27 | .595242 |
| 0210.12.0020 | .27 | .595242 |
| 0210.12.0040 | .27 | .595242 |
| 0210.19.0010 | .31 | .683426 |
| 0210.19.0090 | .31 | .683426 |
| 1601.00.2010 | .37 | .815702 |
| 1601.00.2090 | .37 | .815702 |
| 1602.41.2020 | .41 | .903886 |
| 1602.41.2040 | .41 | .903886 |
| 1602.41.9000 | .27 | .595242 |
| 1602.42.2020 | .41 | .903886 |
| 1602.42.2040 | .41 | .903886 |
| 1602.42.4000 | .27 | .595242 |
| 1602.49.2000 | .37 | .815702 |
| 1602.49.4000 | .31 | .683426 |

[61 FR 28003, June 4, 1996; 61 FR 35597, July 8, 1996]

### §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]

### §1230.115 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]**

# PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

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AUTHORITY: 7 U.S.C. 4601–4612.

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—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—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

AUTHORITY: Pub. L. 98–590, 7 U.S.C. 4601–4612.

SOURCE: 51 FR 17918, May 16, 1986, unless otherwise noted.

### § 1240.200 General.

Referenda to determine whether eligible producers and importers favor the termination or suspension of a Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

[56 FR 37458, Aug. 7, 1991]

### § 1240.201 Definitions.

(a) *Act* means the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601–4612.

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

(c) *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.

(d) *Order* means the order (including an amendment to the order) with respect to which the Secretary has directed that a referendum be conducted.

(e) *Referendum agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(f) *Representative period* means the period designated by the Secretary pursuant to section 12 of the Act.

(g) *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 capital and others contribute 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 honey or honey products for market and the authority to transfer title to the honey and honey products so produced or imported.

(h) *Eligible producer* means any person defined as a producer or producer-packer in the order who produces, or handles, or produces and handles honey or honey products and who does not claim an exemption from paying assessments 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; or

(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;

(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.

(i) *Eligible importer* means any person defined as an importer in the order, engaged in the importation of honey and/or honey products and who does not claim an exemption from paying assessments during the representative period. Importation occurs when commodities originating outside the United States are released from custody of the U.S. Customs Service and introduced into the stream of commerce within the United States. Included are persons who hold title to foreign-produced honey and/or honey products immediately upon release by the Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of honey and/or honey products from Customs and introduce them into the current of commerce.

(j) ''Honey Board'' means the administrative board provided for under section 7(c) of the Act.

[51 FR 17918, May 16, 1986, as amended at 56 FR 37459, Aug. 7, 1991]

### §1240.202 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 only one vote in the referendum. However, 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 one vote in the referendum covering only his or her share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of a eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate may cast a ballot on behalf of such producer, importer or estate. Any individual so voting in a referendum shall certify that he or she is an officer or employee of the eligible producer or

importer, or an administrator, executor, or trustee of an eligible producing or importing estate, and that he or she has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each eligible producer and importer shall be entitled to cast only one ballot in the referendum.

**§ 1240.203 Instructions.**

The referendum agent shall conduct the referendum, in the manner herein provided, under 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 of the referendum, and the time when all ballots may be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) 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 amount of honey produced by the voting producer during the representative period,

(3) The total volume of honey and/or honey products produced and/or imported during the representative period, and

(4) In a joint venture, names of the parties and each one's share of ownership.

(d) Give reasonable advance notice of the referendum:

(1) By utilizing available media or public information sources without advertising expense (including but not limited to, press and radio facilities) announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and

(2) By such other means as said agent may deem advisable.

(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order: *Provided*, That no person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballot cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

[51 FR 17918, May 16, 1986, as amended at 56 FR 37459, Aug. 7, 1991]

**§ 1240.204 Subagents.**

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his or her functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements

herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

### § 1240.205 Ballots.

The referendum agent and his or her appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his or her signature, on said 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.

### § 1240.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary 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.

### § 1240.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

# PART 1250—EGG RESEARCH AND PROMOTION

## Subpart—Egg Research and Promotion Order

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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

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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) For Board nominations and appointments beginning with those in 1996, the United States shall be divided into 39 geographical units and 1 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 | 1,677 | 2 |
| 2. Arizona | 863 | 1 |
| 3. Arkansas | 1,837 | 2 |
| 4. California | 4,617 | 5 |
| 5. Colorado | 2,967 | 3 |
| 6. Florida | 1,977 | 2 |
| 7. Georgia | 1,477 | 1 |
| 8. Idaho | 1,720 | 2 |
| 9. Illinois | 1,813 | 2 |
| 10. Indiana | 1,163 | 1 |
| 11. Iowa | 4,183 | 4 |
| 12. Kansas | 6,067 | 6 |
| 13. Kentucky | 2,617 | 3 |
| 14. Louisiana | 943 | 1 |
| 15. Michigan | 1,210 | 1 |
| 16. Minnesota | 2,750 | 3 |
| 17. Mississippi | 1,353 | 1 |
| 18. Missouri | 4,600 | 5 |
| 19. Montana | 2,583 | 3 |
| 20. Nebraska | 6,017 | 6 |
| 21. New Mexico | 1,437 | 1 |
| 22. New York | 1,503 | 2 |
| 23. North Carolina | 1,063 | 1 |
| 24. North Dakota | 1,857 | 2 |
| 25. Ohio | 1,480 | 1 |
| 26. Oklahoma | 5,333 | 5 |
| 27. Pennsylvania | 1,783 | 2 |
| 28. South Carolina | 513 | 1 |
| 29. South Dakota | 3,833 | 4 |
| 30. Tennessee | 2,450 | 2 |
| 31. Texas | [1] 4,667 | 15 |
| 32. Utah | 867 | 1 |
| 33. Virginia | 1,713 | 2 |
| 34. Wisconsin | 3,883 | 4 |
| 35. Wyoming | 1,383 | 1 |
| 36. Northwest | ..... | 2 |
| Alaska | 9 | |
| Hawaii | 173 | |
| Washington | 1,353 | |
| Total | 1,535 | |
| 37. Northeast | ..... | 1 |
| Connecticut | 76 | |
| Delaware | 30 | |
| Maine | 116 | |
| Massachusetts | 69 | |

CATTLE AND CALVES [1]—Continued

| State/unit | (1,000 head) | Directors |
|---|---|---|
| New Hampshire | 49 | |
| New Jersey | 67 | |
| Rhode Island | 7 | |
| Vermont | 292 | |
| Total | 706 | |
| 38. Mid-Atlantic | ..... | 1 |
| District of Columbia | 0 | |
| Maryland | 310 | |
| West Virginia | 477 | |
| Total | 787 | |
| 39. Western | ..... | 2 |
| Nevada | 497 | |
| Oregon | 1,420 | |
| Total | 1,917 | |
| 40. Importer [2] | 7,016 | 7 |

[1] 1993, 1994, and 1995 average.
[2] 1992, 1993, and 1994 average.

(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]

### §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 ("X" one)
☐ Cattle Assoc. ☐ General Farm Organization
☐ Other *(Specify)* .....

| 3. STATE | 4. TOTAL PAID MEMBERSHIP *(Most RECENT FULL calendar year)* | 5. NUMBER OF PAID MEMBERS ENGAGED IN CATTLE PRODUCTION *(Most RECENT FULL calendar year)* | 6. TOTAL ESTIMATED INVENTORY OF CATTLE OWNED BY PAID MEMBERS *(Most RECENT FULL calendar year)* |
|---|---|---|---|
| | IN 198__ NO. _____ | IN 198__ NO. _____ | 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.

## PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

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AUTHORITY: 7 U.S.C. 7101–7111.

SOURCE: 60 FR 64306, Dec. 15, 1995, unless otherwise noted.

## Subpart A—Sheep and Wool Promotion, Research, Education, and Information Order

SOURCE: 61 FR 19517, May 2, 1996, unless otherwise noted.

DEFINITIONS

### §1280.101 Act.

The term *Act* means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111; Public Law No. 103–107; 108 Statute 4210, enacted October 22, 1994, and any amendments thereto.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.101 was suspended.

### § 1280.102 Board.

The term *Board* means the National Sheep Promotion, Research, and Information Board established pursuant to § 1280.201.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.102 was suspended.

### § 1280.103 Carbonized wool.

The term *carbonized wool* means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.103 was suspended.

### § 1280.104 Certified organization.

The term *certified organization* means any organization that has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.104 was suspended.

### § 1280.105 Collecting person.

The term *collecting person* means any person who is responsible for collecting an assessment pursuant to the Act, this subpart and regulations prescribed by the Board and approved by the Secretary, including processors and any other persons who are required to remit assessments to the Board pursuant to this part, except that a collecting person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder shall pass the collected assessments on to the subsequent purchaser pursuant to the Act, this subpart and the regulations prescribed by the Board and approved by the Secretary.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.105 was suspended.

### § 1280.106 Consumer information.

The term *consumer information* means nutritional data and other information that would assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, or use of sheep products.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.106 was suspended.

### § 1280.107 Customs Service.

The term *Customs Service* means the U.S. Customs Service of the Department of the Treasury.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.107 was suspended.

### § 1280.108 Degreased wool.

The term *degreased wool* means wool from which the bulk of impurities has been removed by processing.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.108 was suspended.

### § 1280.109 Department.

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

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.109 was suspended.

### § 1280.110 Education.

The term *education* means activities providing information relating to the sheep industry or sheep products to producers, feeders, importers, consumers, and other persons.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.110 was suspended.

### § 1280.111 Executive Committee.

The term *Executive Committee* means the Executive Committee of the Board established under § 1280.216.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.111 was suspended.

### § 1280.112 Exporter.

The term *exporter* means any person who exports domestic live sheep or greasy wool from the United States.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.112 was suspended.

### § 1280.113 Feeder.

The term *feeder* means any person who feeds lambs until the lambs reach slaughter weight.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.113 was suspended.

### §1280.114 Greasy wool.

The term *greasy wool* means wool that has not been washed or otherwise cleaned.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.114 was suspended.

### §1280.115 Handler.

The term *handler* means any person who purchases and markets greasy wool.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.115 was suspended.

### §1280.116 Importer.

The term *importer* means any person who imports sheep or sheep products into the United States.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.116 was suspended.

### §1280.117 Industry information.

The term *industry information* means information and programs that would lead to increased efficiency in processing and the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of sheep or sheep products on a national or international basis.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.117 was suspended.

### §1280.118 National feeder organization.

The term *national feeder organization* means any organization of feeders that has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.118 was suspended.

### §1280.119 Part and subpart.

*Part* means the Sheep and Wool Promotion, Research, Education, and Information 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.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.119 was suspended.

### §1280.120 Person.

The term *person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.120 was suspended.

### §1280.121 Processor.

The term *processor* means any person who slaughters sheep or processes greasy wool into degreased wool.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.121 was suspended.

### §1280.122 Producer.

The term *producer* means any person, other than a feeder, who owns or acquires ownership of sheep.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.122 was suspended.

### §1280.123 Producer information.

The term *producer information* means activities designed to provide producers, feeders, and importers with information relating to production or marketing efficiencies or developments, program activities, or other information that would facilitate an increase in the consumption of sheep or sheep products.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.123 was suspended.

### §1280.124 Promotion.

The term *promotion* means any action (including paid advertising) to advance the image and desirability of sheep or sheep products, to improve the competitive position, and stimulate sales, of sheep products in the domestic and international marketplace.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.124 was suspended.

### §1280.125 Pulled wool.

The term *pulled wool* means wool that is pulled from the skin of slaughtered sheep.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.125 was suspended.

**§ 1280.126 Qualified State Sheep Board.**

The term *Qualified State Sheep Board* means a sheep and wool promotion entity that:

(a) Is authorized by State statute or organized and operating within a State;

(b) Receives voluntary contributions or dues and conducts promotion, research, or consumer information programs with respect to sheep or wool, or both; and

(c) Is recognized by the Board as the sheep and wool promotion entity within the State; except that not more than one QSSB shall exist in any State at any one time.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.126 was suspended.

**§ 1280.127 Raw wool.**

The term *raw wool* means greasy wool, pulled wool, degreased wool, or carbonized wool.

**§ 1280.128 Research.**

The term *research* means development projects and studies relating to the production (including the feeding of sheep), processing, distribution, or use of sheep or sheep products, to encourage, expand, improve, or make more efficient the marketing of sheep or sheep products.

**§ 1280.129 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, or to whom authority may be delegated, to act in the Secretary's stead.

**§ 1280.130 Sheep.**

The term *sheep* means ovine animals of any age, including lambs.

**§ 1280.131 Sheep products.**

The term *sheep products* means products produced in whole or in part from sheep, including wool and products containing wool fiber.

**§ 1280.132 State.**

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

**§ 1280.133 Unit.**

The term *unit* means each State, group of States, or class designation that is represented on the Board.

**§ 1280.134 United States.**

The term *United States* means the 50 States and the District of Columbia.

**§ 1280.135 Wool.**

The term *wool* means the fiber from the fleece of a sheep.

**§ 1280.136 Wool products.**

The term *wool products* means products produced, in whole or in part, from wool and products containing wool fiber.

NATIONAL SHEEP PROMOTION, RESEARCH, AND INFORMATION BOARD

**§ 1280.201 Establishment and membership of the Board.**

There is hereby established a National Sheep Promotion, Research, and Information Board (Board) of 120 members. Members of the Board shall be appointed by the Secretary from nominations submitted in accordance with this subpart. The seats shall be apportioned as follows:

(a) Producers: For purposes of nominating producers to the Board, each State shall be represented by the following number of members:

| Unit | Board members |
|---|---|
| Alabama | 1 |
| Alaska | 1 |
| Arizona | 1 |
| Arkansas | 1 |
| California | 5 |
| Colorado | 4 |
| Connecticut | 1 |
| Delaware | 1 |
| Florida | 1 |
| Georgia | 1 |
| Hawaii | 1 |
| Idaho | 2 |
| Illinois | 1 |
| Indiana | 1 |
| Iowa | 2 |
| Kansas | 1 |
| Kentucky | 1 |
| Louisiana | 1 |
| Maine | 1 |
| Maryland | 1 |
| Massachusetts | 1 |
| Michigan | 1 |
| Minnesota | 2 |
| Mississippi | 1 |
| Missouri | 1 |

| Unit | Board members |
|---|---|
| Montana | 5 |
| Nebraska | 1 |
| Nevada | 1 |
| New Hampshire | 1 |
| New Jersey | 1 |
| New Mexico | 2 |
| New York | 1 |
| North Carolina | 1 |
| North Dakota | 2 |
| Ohio | 1 |
| Oklahoma | 1 |
| Oregon | 2 |
| Pennsylvania | 1 |
| Rhode Island | 1 |
| South Carolina | 1 |
| South Dakota | 4 |
| Tennessee | 1 |
| Texas | 10 |
| Utah | 3 |
| Vermont | 1 |
| Virginia | 1 |
| Washington | 1 |
| West Virginia | 1 |
| Wisconsin | 1 |
| Wyoming | 5 |

(b) Feeders. The feeder sheep industry shall be represented by 10 members.

(c) Importers. Importers shall be represented by 25 members.

(d) Alternates. A unit represented by only one producer member may have an alternate member appointed to ensure representation at meetings of the Board.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.201 was suspended.

### §1280.202 Nominations.

(a) Producers. The Secretary shall appoint producers and alternates to represent units as specified under §1280.201(a) of this subpart from nominations submitted by organizations certified under §1280.207. A certified organization may submit only nominations for producer representatives and alternates if appropriate from the membership of the organization for the unit in which the organization operates. To be represented on the Board, each certified organization shall submit to the Secretary at least 1.5 nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment.

(b) Feeders. The Secretary shall appoint representatives of the feeder sheep industry to seats established under §1280.201(b) from nominations submitted by qualified national organizations that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board to which the feeder sheep industry is entitled.

(c) Importers. The Secretary shall appoint importers to seats established under §1280.201(c) from nominations submitted by qualified organizations that represent importers. The Secretary shall receive at least 1.5 nominations for each appointment to the Board to which importers are entitled.

(d) As soon as practicable, the Secretary shall obtain nominations from certified organizations. If no organization is certified in a unit the Secretary may use other means to obtain nominations. A certified organization shall only submit nominations for positions on the Board representing units in which such certified organization can establish that it is certified as eligible to submit nominations for representation of that unit of individual producers, feeders, or importers residing in that unit.

(e) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations shall be initiated not less than 6 months before the expiration of the terms of the members whose terms are expiring, in the manner described in §1280.205(b). In the case of vacancies due to reasons other than the expiration of term of office, successor Board members shall be appointed pursuant to §1280.206.

(f) Where there is more than one eligible organization representing producers, feeders, or importers in a State or unit, they may caucus and jointly nominate a minimum of 1.5 qualified persons for each position representing that State or 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 certified organization may submit nominations for each appointment to be made to represent that State or unit.

(g) Nominations should be submitted in order of preference and, for the initial Board, in order of preference for

staggered terms. If the Secretary rejects any nominations submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraphs (a), (b), or (c) of this section.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.202 was suspended.

### § 1280.203 Nominee's agreement to serve.

Any producer, feeder, or importer nominated to serve on the Board, or as an alternate, 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 any organization that operates a qualified State or regional program or has a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision making, or voting on matters that concern the relationship disclosed under paragraph (b) of this section.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.203 was suspended.

### § 1280.204 Appointment.

From the nominations made pursuant to § 1280.202 above, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1280.201 above.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.204 was suspended.

### § 1280.205 Method of obtaining nominations.

(a) Initially Established Board.

(1) Producer and Alternate Nominations. The Secretary shall solicit, from organizations certified under § 1280.207, nominations for each producer's or alternate member's seat on the initially-established Board to which a unit is entitled. If no such organization exist, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(2) Feeder and Importer Nominations. The Secretary shall solicit, from certified organizations that represent feeders and importers, nominations for each seat to which feeders or importers are entitled. If no such organization exists, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate. In determining whether an organization is eligible to submit nominations under this subparagraph, the Secretary shall determine whether:

(A) The organization's active membership includes a significant number of feeders or importers in relation to the total membership of the organization;

(B) There is evidence of stability and permanency of the organization; and

(C) The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(b) Subsequent Appointment.

(1) Producer Nominations. The solicitation of nominations for subsequent appointment to the Board from eligible organizations certified under § 1280.207 shall be initiated by the Secretary, with the Board securing the nominations for the Secretary.

(2) Feeder and Importer Nominations. The solicitation of feeder and importer nominations for subsequent appointment to the Board shall be made by the Secretary from organizations certified in accordance with paragraph (a)(2) of this section.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.205 was suspended.

### § 1280.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations submitted by the Board.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.206 was suspended.

### § 1280.207 Certification of organizations.

(a) In general. The eligibility of any State organization to represent producers and to participate in the making of nominations under this subpart shall be certified by the Secretary. The Secretary shall certify any State organization that the Secretary determines

meets the eligibility criteria established under paragraph (b) of this section. An eligibility determination by the Secretary shall be final.

(b) Basis for Certification. Certification shall be based upon, in addition to other available information, a factual report submitted by the organization that shall contain information considered relevant and specified by the Secretary, including:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

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

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the aims and objectives of the Act.

(c) Primary Considerations. A primary consideration in determining the eligibility of an organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.207 was suspended.

### §1280.208 Term of office.

Each appointment to the Board shall be for a term of 3 years, except that appointments to the initially established Board shall be proportionately for 1-year, 2-year, and 3-year terms. No person may serve more than two consecutive 3-year terms, except that elected officers shall not be subject to the term limitation while they hold office.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.208 was suspended.

### §1280.209 Compensation.

Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as Board members.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.209 was suspended.

### §1280.210 Removal.

If the Secretary determines that any person appointed under this part fails to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. The Secretary may remove a person appointed or certified under this part, or any employee of the Board, if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.210 was suspended.

### §1280.211 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To elect officers of the Board, including a chairperson, vice chairperson, and secretary/treasurer;

(b) To administer this subpart in accordance with its terms and provisions;

(c) To recommend regulations to effectuate the terms and provisions of this subpart;

(d) To hold at least one annual meeting and any additional meetings it deems appropriate;

(e) To elect members of the Board to serve on the Executive Committee;

(f) To approve or reject budgets submitted by the Executive Committee;

(g) To submit budgets to the Secretary for approval;

(h) To contract with entities, if necessary, to implement plans or projects in accordance with the Act;

(i) To conduct programs of promotion, research, consumer information, education, industry information, and producer information;

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

(k) To recommend to the Secretary amendments to this subpart;

(l) To provide the Secretary with prior notice of meetings of the Board to permit the Secretary or a designated representative to attend such meetings;

(m) To provide not less than annually a report to producers, feeders, and importers, accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request;

(n) To establish seven regions that, to the extent practicable, contain geographically contiguous States and approximately equal numbers of sheep producers and sheep production;

(o) To employ or retain necessary staff; and

(p) To invest funds in accordance with § 1280.214.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.211 was suspended.

### § 1280.212 Budgets.

(a) In general. The Board shall review the budget submitted by the Executive Committee, on a fiscal year basis, of anticipated expenses and disbursements by the Board, including probable costs of administration and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall submit the budget to the Secretary for the Secretary's approval.

(b) Limitation. No expenditure of funds may be made by the Board unless such expenditure is authorized under a budget or budget amendment approved by the Secretary.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.212 was suspended.

### § 1280.213 Books and records of the Board.

The Board shall:

(a) Maintain such books and records, which shall be made available to the Secretary for inspection and audit, as the Secretary may prescribe;

(b) Prepare and submit to the Secretary, from time-to-time, such reports as the Secretary may prescribe; and

(c) Account for the receipt and disbursement of all funds entrusted to it. The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.213 was suspended.

### § 1280.214 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 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. Any income from any such investment may be used for any purpose for which the invested funds may be used.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.214 was suspended.

### § 1280.215 Use of assessments.

(a) Assessments received by the Board shall be used by the Board:

(1) To fund promotion, research, education, and information plans and projects authorized under this subpart, including promotion plans and projects which make specific reference to domestic sheep and sheep products originating or being produced and/or marketed in the U.S., except that the combined expenditures for such promotion plans and projects involving domestic country of origin shall be limited to no more than the combined domestic assessments collected on sheep and sheep products and the percentage of domestic assessments spent on the promotion of domestic sheep and sheep products shall not exceed the percentage of import assessments spent on the generic promotion of sheep and sheep products; and

(2) For the payment of expenses incurred in administering this subpart, including a reasonable reserve.

(b) The Board shall reimburse the Secretary, from assessments collected, for costs incurred in implementing and administering the Order as provided for under the Act.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.215 was suspended.

## EXECUTIVE COMMITTEE

### § 1280.216 Establishment.

The Board shall establish an Executive Committee of the Board to assist the Board in the administration of the

terms and provisions of this subpart, under the direction of the Board, and consistent with the policies determined by the Board.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.216 was suspended.

### §1280.217 Membership.

The Executive Committee shall be comprised of 14 members:

(a) Eleven members of the Executive Committee shall be elected by the Board annually. Of these members:

(1) One member shall represent each of the seven regions established under §1280.211(n) for a total of seven members representing producers;

(2) One member shall represent feeders; and

(3) Three members shall represent importers.

(b) The remaining three members of the Executive Committee shall be the elected officers of the Board.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.217 was suspended.

### §1280.218 Powers and duties.

(a) Plans and Projects. The Executive Committee shall develop plans or projects of promotion and advertising, research, consumer information, education, industry information, and producer information, which plans or projects shall be paid for with assessments collected by the Board. The plans or projects shall not become effective until approved by the Secretary.

(b) Budgets. The Executive Committee shall be responsible for developing and submitting to the Board, for Board approval, budgets on a fiscal year basis of the Board's anticipated expenses and disbursements, including the estimated costs of advertising and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall approve or disapprove such budgets and, if approved, shall submit them to the Secretary for the Secretary's approval.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.218 was suspended.

### §1280.219 Term of office.

Terms of appointment to the Executive Committee shall be for 1 year.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.219 was suspended.

### §1280.220 Chairperson.

The Chairperson of the Board shall serve as chairperson of the Executive Committee.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.220 was suspended.

### §1280.221 Quorum.

A quorum of the Executive Committee shall consist of eight members.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.221 was suspended.

### §1280.222 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of any member of the Executive Committee, the Board shall elect a successor for the position pursuant to §1280.217.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.222 was suspended.

## EXPENSES

### §1280.223 Expenses.

(a) The Board shall be responsible for all expenses of the Board and the Executive Committee.

(b) Contracts and Agreements. Any contract or agreement entered into by the Board shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project of promotion, research, education, consumer information, industry information, and producer information, together with a budget or budgets that shall show estimated costs to be incurred for such plan or project; and

(2) No plan, project, contract, or agreement shall become effective until it has been approved by the Secretary.

(c) The contracting party shall:

(1) keep accurate records of all of its transactions;

(2) account for funds received and expended, including staff time, salaries, and expenses expended on behalf of Board activities;

(3) make periodic reports to the Board of activities conducted; and

(4) make such other reports as the Board or the Secretary may require.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.213 was suspended.

ASSESSMENTS

**§ 1280.224 Sheep purchases.**

(a) In general. Each person making payment to a producer or feeder for sheep purchased from the producer or feeder shall be a collecting person and shall collect an assessment from the producer or feeder on each sheep sold by the producer or feeder. Each such producer or feeder shall pay such assessment to the collecting person at the rate set forth in paragraph (d) of this section.

(b) Remittances. Each processor making payment to a producer, feeder, or collecting person for sheep purchased from the producer, feeder, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder, or other collecting person on each sheep sold by the producer, feeder, or collecting person, and each such producer, feeder, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) in this section, and such processor shall remit the assessment to the Board.

(c) Processing. Any person who purchases sheep for processing shall collect the assessment from the seller and remit the assessment to the Board.

(d) Rate. Except as otherwise provided, the rate of assessment shall be 1 cent per pound of live sheep sold. The rate of assessment may be raised or lowered no more than 0.15 of a cent in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount. The rate of assessment shall not exceed 2½ cents per pound.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, the effective date of § 1280.224 was postponed indefinitely.

**§ 1280.225 Wool purchases.**

(a) In general. Each person making payment to a producer, feeder, or handler of wool for wool purchased from the producer, feeder, or handler shall be a collecting person and shall collect an assessment from the producer, feeder, or handler on each pound of greasy wool sold. The producer, feeder, or handler shall pay such assessment to the collecting person at the rate set forth in (d) of this section.

(b) Remittances. Each processor making payment to a producer, feeder, handler, or collecting person for wool purchased from the producer, feeder, handler, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder, handler, or other collecting person on all wool sold by the producer, feeder, handler, or collecting person, and each such producer, feeder, handler, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) of this section and such processor shall remit the assessment to the Board.

(c) Processing. Any person purchasing greasy wool for processing shall collect the assessment and remit the assessment to the Board.

(d) Rate. Except as otherwise provided, the rate of assessment shall be 2 cents per pound. The rate of assessment may be raised or lowered no more than 0.2 of a cent per pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount. The rate of assessment shall not exceed 4 cents per pound of greasy wool.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, the effective date of § 1280.225 was postponed indefinitely.

**§ 1280.226 Direct processing.**

Each person who processes or causes to be processed sheep or sheep products of that person's own production, and markets such sheep or sheep products, shall pay an assessment on such sheep

or sheep products at the time of sale at a rate equivalent to the rate established in §1280.224(d) or §1280.225(d), as appropriate, and shall remit such assessment to the Board.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, the effective date of §1280.226 was postponed indefinitely.

### §1280.227 Export.

Each person who exports live sheep or greasy wool shall remit the assessment on such sheep or greasy wool at the time of export, at a rate equivalent to the rate established in §1280.224(d) or §1280.225(d), as appropriate, and shall remit such assessment to the Board.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, the effective date of §1280.227 was postponed indefinitely.

### §1280.228 Imports.

(a) In general. Each person who imports sheep or sheep products or who imports wool or products containing wool (with the exception of raw wool) into the United States shall pay an assessment to the Board.

(b) Collection. Customs is authorized to collect and remit such assessment to the Secretary for disbursement to the Board.

(c) Rate for Sheep and Sheep Products. The assessment rate for sheep shall be 1 cent per pound of live sheep. The assessment rate for sheep products shall be the equivalent of 1 cent per pound of live sheep, as determined by the Secretary in consultation with the domestic sheep industry. Such rates may be raised or lowered no more than 0.15 cent per pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 2½ cents per pound. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount.

(d) Rate for Wool and Wool Products. The assessment rate for wool and products containing wool shall be 2 cents per pound of degreased wool or the equivalent of degreased wool. The rate of assessment may be raised or lowered no more than 0.2 cents per pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 4 cents per pound of degreased wool or the equivalent. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount.

(e) The Secretary shall issue regulations regarding the assessment rates for imported sheep and sheep products. The Secretary may exclude from assessment certain imported products that contain *de minimis* levels of sheep or sheep products and waive the assessment on such products.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, the effective date of §1280.228 was postponed indefinitely.

### §1280.229 Qualified State Sheep Boards.

(a) Except as provided in paragraph (b) of this section, 20 percent of the total assessments collected by the Board on the marketings of domestic sheep and domestic sheep products in any 1 year from a State shall be returned to the QSSB of the State.

(b) No QSSB shall receive less than $2,500 under paragraph (a) of this section in any 1 year.

(c) The Board shall establish procedures with the approval of the Secretary to account for funds expended pursuant to paragraphs (a) and (b) of this section.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.229 was suspended.

### §1280.230 Collection.

(a) Each person responsible for the collection and remittance to the Board of assessments under this subpart shall do so on a monthly basis, unless the Board, with the approval of the Secretary, has specifically authorized otherwise.

(b) Late Payment Charges. Any unpaid assessments due the Board or from a person responsible for remitting assessments to the Board, shall be increased by 2 percent each month beginning with the day after the date such assessments were due under this subpart. Any assessments or late payment

charges that remain unpaid shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(c) Any unpaid assessments due to the Board pursuant to § 1280.224, § 1280.225, § 1280.226, and § 1280.227 shall be increased 2 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 paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a date later than the date prescribed by this subpart because of a person's failure to submit a timely report to the Board shall be considered to have been payable by the date it would have been due if the report had been timely filed. The date of payment is the applicable postmark date or the date of receipt by the Board, whichever is earlier.

(d) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments if the Board is not in place or is otherwise unable to develop such rules and regulations.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.230 was suspended.

### § 1280.231 Prohibition on use of funds.

(a) Except as otherwise provided in paragraph (b) of this section, no funds collected by the Board under this subpart shall 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:

(1) To the development and recommendation of amendments to this subpart; or

(2) To the communication to appropriate Government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information, education, industry information, or producer information activities under this subpart;

(c) A plan or project conducted pursuant to this title shall not make false or misleading claims on behalf of sheep or sheep products or against a competing product.

(d) No such plans or projects shall be undertaken to promote or advertise any sheep or sheep products by brand or trade name without the approval of the Board and the concurrence of the Secretary.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.231 was suspended.

## REPORTS, BOOKS, AND RECORDS

### § 1280.232 Reports.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.224(b) for live sheep, each person who markets sheep products of that person's own production and each exporter of sheep shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The number of sheep purchased, initially transferred or which, in any other manner, are subject to the collection of assessment, and the dates of such transaction;

(2) The number of sheep imported or exported, or the equivalent thereof sheep products imported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of any assessment that is less than the pounds of sheep multiplied by the assessment rate; and

(5) The date any assessment was paid.

(b) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.225(b) for wool purchased from the producer or handler of wool or wool products, each person purchasing

greasy wool for processing, each importer of wool or wool products (except raw wool), each exporter of greasy wool, and each person who markets wool of that person's own production shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The amount of wool purchased, initially transferred or in any other manner subject to the collection of assessment, and the dates of such transaction;

(2) The amount of wool imported (except raw wool) or the equivalent thereof of wool products imported or the amount of greasy wool exported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of an assessment that is less than the pounds of wool multiplied by the assessment rate; and

(5) The date any assessment was paid.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.232 was suspended.

### §1280.233 Books and records.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board, each importer of sheep or sheep products (except raw wool), and exporter of sheep or greasy wool, and each person who markets sheep products of that person's own production, shall maintain and make available for inspection such books and records as may be required by regulations prescribed by the Board and approved by the Secretary, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

(b) Document Evidencing Payment of Assessments. Each collecting person responsible for collecting an assessment paid pursuant to this subpart, other than a person who slaughters sheep or markets sheep products of his or her own production for sale, is required to give the person or collecting person from whom the collecting person collected an assessment written evidence of payment of the assessments paid pursuant to this subpart. Such written evidence serving as a receipt shall include:

(1) Name and address of the collecting person;

(2) Name of the producer who paid the assessment;

(3) Number of head of sheep or pounds of wool sold;

(4) Total assessments paid by the producer;

(5) Date; and

(6) Such other information as the Board, with the approval of the Secretary, may require.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.233 was suspended.

### §1280.234 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, this subpart or any regulation issued under the Act. In addition, the Secretary shall authorize the use under this part of information that is accumulated under laws or regulations other than the Act or regulations issued under the Act regarding persons paying producers, feeders, importers, handlers, or processors.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.234 was suspended.

### §1280.235 Confidentiality.

(a) All information from records or reports required pursuant to this subpart shall be kept confidential by all officers and employees of the Department and of the Board. Such information may be disclosed only if the Secretary considers the information relevant, the information is disclosed 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 the information relates to the Act.

(b) Administration. No information obtained under the authority of this subpart 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) General Statements. Nothing in paragraph (a) of this section may be deemed to prohibit:

(1) The issuance of general statements, based on 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; or

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

(d) Penalty. Any person who willfully violates 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, and if the person is an officer or employee of the Board or the Department, that person shall be removed from office.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.235 was suspended.

MISCELLANEOUS

### § 1280.240 Right of the Secretary.

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

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.40 was suspended.

### § 1280.241 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 of the Board against third parties that exist at the time of such termination.

(b) The trustees shall:

(1) Act as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by the Board pursuant to § 1280.223(b);

(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 assignment of other instruments necessary or appropriate to transfer to such persons full title and right to all of the funds, property, and claims of 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 pay the necessary costs of liquidation shall be turned over to the Secretary to be used, to the extent practicable, for continuing one or more of the promotion, research, consumer information, education, industry information, and producer information plans or projects authorized pursuant to this subpart.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.41 was suspended.

### § 1280.242 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 that has arisen or may hereafter 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, the Secretary or any person with respect to any such violation.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, § 1280.42 was suspended.

### §1280.243 Personal liability.

No member, employee, or agent of the Board, including employees, agents, or Board members of the QSSB, acting pursuant to the 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, employee, or agent except for acts of dishonesty or willful misconduct.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.43 was suspended.

### §1280.244 Patents, copyrights, inventions, and publication.

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 United States 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, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, §1280.240 shall apply to determine disposition of all such property.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.44 was suspended.

### §1280.245 Amendments.

Amendments to the 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.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.45 was suspended.

### §1280.246 Separability.

If any provision of this subpart is declared invalid or its applicability 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.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, §1280.46 was suspended.

## Subpart B—Rules and Regulations

SOURCE: 61 FR 21059, May 9, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, the effective date of subpart B to part 1280 was postponed indefinitely.

DEFINITIONS

### §1280.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

ASSESSMENTS

### §1280.310 Assessments on domestic sheep and sheep products.

(a) Domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool will be assessed 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold.

(b) Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products will be assessed the equivalent of 1 cent per pound of live sheep sold or 2 cents per pound of greasy wool sold.

(c) If more than one producer, feeder, handler, or exporter shares the proceeds received for the sheep or sheep products sold, each such producer, feeder, handler, or exporter is obligated to pay that portion of the assessments that is equivalent to that producer's, feeder's, handler's, or exporter's proportionate share of the proceeds.

(d) Failure of the purchaser or collecting person to collect the assessment and pass along the assessment to the next purchaser, if necessary, and finally to the processor, as required in §1280.313, shall not relieve the producer, feeder, or the collecting person of his or her obligation to pay the assessment to the feeder, collecting person, or processor and to remit the assessment to Board.

### §1280.311 Late payment charges.

(a) Assessments shall be remitted to the address designated by the Board by the 15th day of the month following the

month in which domestic sheep or wool was purchased for processing.

(b) Any unpaid assessments due to the Board from any person responsible for remitting the assessment shall be increased by 2 percent the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid assessments and late payment charges previously owed pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment calculated after the date prescribed by this subpart because of a person's failure to submit a timely report to the Board shall be considered to have been payable by the date it would have been due if the report had been timely filed. The date of payment is determined by the postmark date on the envelope or the date of receipt by the Board, whichever is earlier. If the 15th day falls on a Sunday or a holiday, then the assessment will be due the following day.

### § 1280.312 Assessments on imported sheep and sheep products.

(a) Importers will be assessed 1 cent per pound on live sheep imported, the equivalent of 1 cent per pound of live sheep for imported sheep products, and 2 cents per pound of imported degreased wool or the equivalent of imported degreased wool for wool and wool products. Imported raw wool will be exempt from assessments.

(b) Table I, Imported Sheep and Sheep Products Assessment Table, contains the applicable HTS classification numbers of sheep, sheep meat, wool, and wool products, conversion factors and assessment rates, which is identified based on the net weight of the individual sheep product, in dollars per pound and dollars per kilograms for imported sheep, sheep products, wool, and wool products subject to the assessment. Because raw wool is exempt from the assessment collection provisions, HTS classification numbers for imported raw wool are not included in the table.

(c) In the event that any HTS classification number is changed, replaced by another number and has no impact on the physical properties or description of sheep meat, or wool and wool products, assessments will continue to be collected based on the original HTS classification number.

(d) Assessments will be collected by Customs on all imported sheep and sheep products identified by the HTS classification numbers listed in Table I upon importation.

TABLE I.—IMPORTED SHEEP AND SHEEP PRODUCTS ASSESSMENT TABLE

[Live sheep assessment]

| HTS | $/lb | $/kg |
|---|---|---|
| 0104100000 | 0.010000 | 0.022046 |

[Sheep meat assessment]

| HTS | CF | $/lb | $/kg |
|---|---|---|---|
| 0204100000 | 1.00 | 0.019920 | 0.043916 |
| 0204210000 | 1.00 | 0.019920 | 0.043916 |
| 0204222000 | 1.00 | 0.019920 | 0.043916 |
| 0204224000 | 1.00 | 0.019920 | 0.043916 |
| 0204232000 | 1.52 | 0.030279 | 0.066753 |
| 0204234000 | 1.52 | 0.030279 | 0.066753 |
| 0204300000 | 1.00 | 0.019920 | 0.043916 |
| 0204410000 | 1.00 | 0.019920 | 0.043916 |
| 0204422000 | 1.00 | 0.019920 | 0.043916 |
| 0204424000 | 1.00 | 0.019920 | 0.043916 |
| 0204432000 | 1.52 | 0.030279 | 0.066753 |
| 0204434000 | 1.52 | 0.030279 | 0.066753 |

[Wool and Products containing Wool Fibers]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 5007106030 | 0.5546 | 0.011092 | 0.024454 |
| 5007906030 | 0.5546 | 0.011092 | 0.024454 |
| 5103100000 | 1.0870 | 0.021740 | 0.047929 |
| 5103200000 | 1.0870 | 0.021740 | 0.047929 |
| 5104000000 | 1.0000 | 0.020000 | 0.044092 |
| 5105100000 | 1.0309 | 0.020618 | 0.045454 |
| 5105210000 | 1.1111 | 0.022220 | 0.048991 |
| 5105290000 | 1.1111 | 0.022220 | 0.048991 |
| 5106100010 | 1.0870 | 0.021740 | 0.047929 |
| 5106100090 | 1.0870 | 0.021740 | 0.047929 |
| 5106200000 | 0.5435 | 0.010869 | 0.023962 |
| 5107100000 | 1.0870 | 0.021740 | 0.047929 |
| 5107200000 | 0.5435 | 0.010869 | 0.023962 |
| 5109102000 | 1.0870 | 0.021740 | 0.047929 |
| 5111113000 | 1.1091 | 0.022183 | 0.048904 |
| 5111117030 | 1.1091 | 0.022183 | 0.048904 |
| 5111117060 | 1.1091 | 0.022183 | 0.048904 |
| 5111191000 | 1.1091 | 0.022183 | 0.048904 |
| 5111192000 | 1.1091 | 0.022183 | 0.048904 |
| 5111196020 | 0.5546 | 0.011092 | 0.024454 |
| 5111196040 | 0.5546 | 0.011092 | 0.024454 |
| 5111196060 | 1.1091 | 0.022183 | 0.048904 |
| 5111196080 | 1.1091 | 0.022183 | 0.048904 |
| 5111200500 | 0.5546 | 0.011092 | 0.024454 |
| 5111209000 | 0.5546 | 0.011092 | 0.024454 |
| 5111300500 | 0.5546 | 0.011092 | 0.024454 |
| 5111309000 | 0.5546 | 0.011092 | 0.022454 |
| 5111903000 | 0.5546 | 0.011092 | 0.024454 |
| 5111909000 | 0.8319 | 0.016638 | 0.036679 |
| 5112111000 | 0.9982 | 0.019964 | 0.044013 |
| 5112112030 | 1.1091 | 0.022183 | 0.048904 |

[Wool and Products containing Wool Fibers]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 5112112060 | 0.9982 | 0.019964 | 0.044013 |
| 5112192000 | 1.1091 | 0.022183 | 0.048904 |
| 5112199010 | 1.1091 | 0.022183 | 0.048904 |
| 5112199020 | 1.1091 | 0.022183 | 0.048904 |
| 5112199030 | 1.1091 | 0.022183 | 0.048904 |
| 5112199040 | 1.1091 | 0.022183 | 0.048904 |
| 5112199050 | 1.1091 | 0.022183 | 0.048904 |
| 5112199060 | 1.1091 | 0.022183 | 0.048904 |
| 5112201000 | 0.5546 | 0.011092 | 0.024454 |
| 5112203000 | 0.5546 | 0.011092 | 0.024454 |
| 5112301000 | 0.5546 | 0.011092 | 0.024454 |
| 5112303000 | 0.5546 | 0.011092 | 0.024454 |
| 5112903000 | 0.6655 | 0.013311 | 0.029345 |
| 5112904000 | 0.8319 | 0.016638 | 0.036679 |
| 5112909010 | 0.5546 | 0.011092 | 0.024454 |
| 5112909090 | 0.5546 | 0.011092 | 0.024454 |
| 5212231020 | 0.4991 | 0.009982 | 0.022007 |
| 5309292000 | 0.5546 | 0.011092 | 0.024454 |
| 5407920520 | 0.4991 | 0.009982 | 0.022007 |
| 5407921010 | 0.2218 | 0.004437 | 0.009782 |
| 5407921020 | 0.2218 | 0.004437 | 0.009782 |
| 5407931000 | 0.2218 | 0.004437 | 0.009782 |
| 5408310520 | 0.4991 | 0.009982 | 0.022007 |
| 5408321000 | 0.2218 | 0.004437 | 0.009782 |
| 5408341000 | 0.2218 | 0.004437 | 0.009782 |
| 5509520000 | 0.3804 | 0.007608 | 0.016773 |
| 5509610000 | 0.1630 | 0.003260 | 0.007187 |
| 5509910000 | 0.3804 | 0.007608 | 0.016773 |
| 5510200000 | 0.3804 | 0.007608 | 0.016773 |
| 5515130510 | 0.4991 | 0.009982 | 0.022007 |
| 5515130520 | 0.4991 | 0.009982 | 0.022007 |
| 5515131010 | 0.2218 | 0.004437 | 0.009782 |
| 5515131020 | 0.2218 | 0.004437 | 0.009782 |
| 5515220510 | 0.4991 | 0.009982 | 0.022007 |
| 5515221000 | 0.2218 | 0.004437 | 0.009782 |
| 5515920510 | 0.4991 | 0.009982 | 0.022007 |
| 5515920520 | 0.4991 | 0.009982 | 0.022007 |
| 5515921010 | 0.2218 | 0.004437 | 0.009782 |
| 5515921020 | 0.2218 | 0.004437 | 0.009782 |
| 5516311000 | 0.2218 | 0.004437 | 0.009782 |
| 5516320520 | 0.4991 | 0.009982 | 0.022007 |
| 5516321000 | 0.2218 | 0.004437 | 0.009782 |
| 5516330510 | 0.4991 | 0.009982 | 0.022007 |
| 5516330520 | 0.4991 | 0.009982 | 0.022007 |
| 5516331000 | 0.2218 | 0.004437 | 0.009782 |
| 5516341000 | 0.2218 | 0.004437 | 0.009782 |
| 5601290020 | 0.9428 | 0.018856 | 0.041570 |
| 5602109010 | 1.1091 | 0.022183 | 0.048904 |
| 5602109090 | 0.5546 | 0.011092 | 0.024454 |
| 5602210000 | 1.1091 | 0.022183 | 0.048904 |
| 5701101300 | 0.9783 | 0.019566 | 0.043135 |
| 5701101600 | 0.9783 | 0.019566 | 0.043135 |
| 5701104000 | 0.9783 | 0.019566 | 0.043135 |
| 5701109000 | 0.9783 | 0.019566 | 0.043135 |
| 5702101000 | 0.8315 | 0.016630 | 0.036662 |
| 5702109010 | 0.8315 | 0.016630 | 0.036662 |
| 5702311000 | 0.7853 | 0.015706 | 0.034625 |
| 5702312000 | 0.6467 | 0.012934 | 0.028514 |
| 5702411000 | 0.7853 | 0.015706 | 0.034625 |
| 5702412000 | 0.6929 | 0.013859 | 0.030551 |
| 5702512000 | 0.7853 | 0.015706 | 0.034625 |
| 5702514000 | 0.7853 | 0.015706 | 0.034625 |
| 5702913000 | 0.8315 | 0.016630 | 0.036662 |
| 5702914000 | 0.7853 | 0.015706 | 0.034625 |
| 5703100020 | 0.7933 | 0.015886 | 0.035022 |
| 5703100080 | 0.7933 | 0.015886 | 0.035022 |
| 5704100010 | 0.7466 | 0.014932 | 0.032919 |
| 5704900010 | 0.9332 | 0.018664 | 0.041147 |
| 5705002005 | 0.7466 | 0.014932 | 0.032919 |
| 5801100000 | 1.1091 | 0.022183 | 0.048904 |
| 5801902090 | 1.1091 | 0.022183 | 0.048904 |

[Wool and Products containing Wool Fibers]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 5805002000 | 1.1091 | 0.022183 | 0.048904 |
| 5805002500 | 1.1091 | 0.022183 | 0.048904 |
| 5810991000 | 1.1091 | 0.022183 | 0.048904 |
| 5903903010 | 0.5546 | 0.011092 | 0.024454 |
| 6001290000 | 1.1322 | 0.022644 | 0.049921 |
| 6002410000 | 1.1322 | 0.022644 | 0.049921 |
| 6002490000 | 1.1322 | 0.022644 | 0.049921 |
| 6002910000 | 1.1322 | 0.022644 | 0.049921 |
| 6101100000 | 1.0533 | 0.021066 | 0.046442 |
| 6102100000 | 1.0533 | 0.021066 | 0.046442 |
| 6102301000 | 0.5266 | 0.010532 | 0.023219 |
| 6103110000 | 0.8806 | 0.017612 | 0.038828 |
| 6103122000 | 0.1887 | 0.003773 | 0.008319 |
| 6103310000 | 1.0293 | 0.020586 | 0.045384 |
| 6103411010 | 0.8615 | 0.017230 | 0.037986 |
| 6103412000 | 0.8615 | 0.017230 | 0.037986 |
| 6103431020 | 0.4923 | 0.009846 | 0.021708 |
| 6104110000 | 0.9007 | 0.018014 | 0.039714 |
| 6104310000 | 0.9007 | 0.018014 | 0.039714 |
| 6104331000 | 0.5147 | 0.010293 | 0.022692 |
| 6104332000 | 0.1287 | 0.002573 | 0.005673 |
| 6104391000 | 0.1287 | 0.002573 | 0.005673 |
| 6104410010 | 1.0064 | 0.020128 | 0.044374 |
| 6104431010 | 0.5032 | 0.010064 | 0.022187 |
| 6104432010 | 0.1258 | 0.002517 | 0.005549 |
| 6104432020 | 0.1258 | 0.002517 | 0.005549 |
| 6104441000 | 0.5032 | 0.010064 | 0.022187 |
| 6104442010 | 0.1258 | 0.002517 | 0.005549 |
| 6104442020 | 0.1258 | 0.002517 | 0.005549 |
| 6104510000 | 1.0411 | 0.020822 | 0.045904 |
| 6104531000 | 0.5206 | 0.010412 | 0.022954 |
| 6104532010 | 0.1301 | 0.002602 | 0.005737 |
| 6104532020 | 0.1301 | 0.002602 | 0.005737 |
| 6104591005 | 0.5206 | 0.010412 | 0.022954 |
| 6104591030 | 0.1301 | 0.002602 | 0.005737 |
| 6104610010 | 0.8256 | 0.016512 | 0.036402 |
| 6104631510 | 0.4718 | 0.009436 | 0.020803 |
| 6105201000 | 0.4617 | 0.009234 | 0.020357 |
| 6105901000 | 0.8080 | 0.016160 | 0.035626 |
| 6105908020 | 0.5420 | 0.010840 | 0.023898 |
| 6106201010 | 0.4818 | 0.009636 | 0.021243 |
| 6106201020 | 0.4818 | 0.009636 | 0.021243 |
| 6106901010 | 0.8432 | 0.016864 | 0.037178 |
| 6107992000 | 0.8256 | 0.016512 | 0.036402 |
| 6108992000 | 0.8167 | 0.016334 | 0.036010 |
| 6109901530 | 0.8432 | 0.016864 | 0.037178 |
| 6110101010 | 1.2866 | 0.025733 | 0.056730 |
| 6110101020 | 1.2866 | 0.025733 | 0.056730 |
| 6110101030 | 1.2866 | 0.025733 | 0.056730 |
| 6110101040 | 1.2866 | 0.025733 | 0.056730 |
| 6110101050 | 1.2866 | 0.025733 | 0.056730 |
| 6110101060 | 1.2866 | 0.025733 | 0.056730 |
| 6110102010 | 0.9007 | 0.018014 | 0.039714 |
| 6110102020 | 0.9007 | 0.018014 | 0.039714 |
| 6110102030 | 0.9007 | 0.018014 | 0.039714 |
| 6110102040 | 0.9007 | 0.018014 | 0.039714 |
| 6110102050 | 0.9007 | 0.018014 | 0.039714 |
| 6110102060 | 0.9007 | 0.018014 | 0.039714 |
| 6110102070 | 0.9007 | 0.018014 | 0.039714 |
| 6110102080 | 0.9007 | 0.018014 | 0.039714 |
| 6110301510 | 0.5147 | 0.010293 | 0.022692 |
| 6110301520 | 0.5147 | 0.010293 | 0.022692 |
| 6110301530 | 0.5147 | 0.010293 | 0.022692 |
| 6110301540 | 0.5147 | 0.010293 | 0.022692 |
| 6110301550 | 0.5147 | 0.010293 | 0.022692 |
| 6110301560 | 0.5147 | 0.010293 | 0.022692 |
| 6110303010 | 0.1930 | 0.003861 | 0.008512 |
| 6110303015 | 0.1930 | 0.003861 | 0.008512 |
| 6110303020 | 0.1930 | 0.003861 | 0.008512 |
| 6110303025 | 0.1930 | 0.003861 | 0.008512 |
| 6110303030 | 0.1930 | 0.003861 | 0.008512 |

[Wool and Products containing Wool Fibers]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 6110303035 | 0.1930 | 0.003861 | 0.008512 |
| 6110303040 | 0.1930 | 0.003861 | 0.008512 |
| 6110303045 | 0.1930 | 0.003861 | 0.008512 |
| 6110303050 | 0.1930 | 0.003861 | 0.008512 |
| 6110303055 | 0.1930 | 0.003861 | 0.008512 |
| 6110909012 | 0.5790 | 0.011581 | 0.025531 |
| 6110909028 | 0.6433 | 0.012866 | 0.028364 |
| 6110909074 | 0.5790 | 0.011581 | 0.025531 |
| 6111100010 | 1.1076 | 0.022152 | 0.048836 |
| 6111100030 | 1.1076 | 0.022152 | 0.048836 |
| 6114100040 | 0.8806 | 0.017612 | 0.038828 |
| 6114100050 | 0.8806 | 0.017612 | 0.038828 |
| 6114100070 | 0.8806 | 0.017612 | 0.038828 |
| 6115198020 | 1.1322 | 0.022644 | 0.049921 |
| 6115910000 | 0.9058 | 0.018116 | 0.039939 |
| 6115939010 | 0.4529 | 0.009058 | 0.019968 |
| 6116109500 | 0.0834 | 0.001668 | 0.003677 |
| 6116910000 | 0.9535 | 0.019070 | 0.042042 |
| 6116936400 | 0.4767 | 0.009534 | 0.021019 |
| 6116937400 | 0.4767 | 0.009534 | 0.021019 |
| 6116938800 | 0.1788 | 0.003575 | 0.007882 |
| 6116939400 | 0.1788 | 0.003575 | 0.007882 |
| 6116999530 | 0.3576 | 0.007152 | 0.015768 |
| 6117101000 | 1.0727 | 0.021454 | 0.047298 |
| 6117102010 | 0.4767 | 0.009534 | 0.021019 |
| 6117809020 | 0.9635 | 0.019270 | 0.042483 |
| 6117809030 | 0.5959 | 0.011919 | 0.026276 |
| 6201110010 | 1.0199 | 0.020398 | 0.044970 |
| 6201110020 | 1.0199 | 0.020398 | 0.044970 |
| 6201122010 | 0.0637 | 0.001274 | 0.002809 |
| 6201133010 | 0.4590 | 0.009180 | 0.020238 |
| 6201134015 | 0.0510 | 0.001021 | 0.002250 |
| 6201134030 | 0.1020 | 0.002039 | 0.004495 |
| 6201134040 | 0.1020 | 0.002039 | 0.004495 |
| 6201199020 | 0.6374 | 0.012748 | 0.028104 |
| 6201911000 | 0.9970 | 0.019939 | 0.043958 |
| 6201912011 | 0.9970 | 0.019939 | 0.043958 |
| 6201912021 | 0.9970 | 0.019939 | 0.043958 |
| 6201932511 | 0.4985 | 0.009970 | 0.021980 |
| 6202110010 | 0.8823 | 0.017646 | 0.038901 |
| 6202110020 | 0.8823 | 0.017646 | 0.038901 |
| 6202122010 | 0.0630 | 0.001261 | 0.002779 |
| 6202133010 | 0.5804 | 0.011608 | 0.025591 |
| 6202134005 | 0.0645 | 0.001290 | 0.002843 |
| 6202134030 | 0.1290 | 0.002584 | 0.005697 |
| 6202911000 | 1.0083 | 0.020167 | 0.044459 |
| 6202912011 | 1.0083 | 0.020167 | 0.044459 |
| 6202912021 | 1.0083 | 0.020167 | 0.044459 |
| 6202934011 | 0.5672 | 0.011344 | 0.025009 |
| 6203111000 | 0.6302 | 0.012603 | 0.027785 |
| 6203112000 | 0.6302 | 0.012603 | 0.027785 |
| 6203121000 | 0.5672 | 0.011344 | 0.025009 |
| 6203310010 | 1.0713 | 0.021426 | 0.047236 |
| 6203310020 | 1.0713 | 0.021426 | 0.047236 |
| 6203331030 | 0.5672 | 0.011344 | 0.025009 |
| 6203331050 | 0.5672 | 0.011344 | 0.025009 |
| 6203399020 | 0.6302 | 0.012604 | 0.027787 |
| 6203410510 | 1.0083 | 0.020166 | 0.044458 |
| 6203410520 | 1.0083 | 0.020166 | 0.044458 |
| 6203433010 | 0.5425 | 0.010850 | 0.023921 |
| 6203433020 | 0.5425 | 0.010850 | 0.023921 |
| 6204110000 | 0.9453 | 0.018906 | 0.041680 |
| 6204131000 | 0.5672 | 0.011344 | 0.025009 |
| 6204132010 | 0.1891 | 0.003782 | 0.008337 |
| 6204191000 | 0.5672 | 0.011344 | 0.025009 |
| 6204192000 | 0.1891 | 0.003782 | 0.008337 |
| 6204210010 | 0.8823 | 0.017646 | 0.038901 |
| 6204210030 | 0.8823 | 0.017646 | 0.038901 |
| 6204312010 | 1.0713 | 0.021426 | 0.047236 |
| 6204312020 | 1.0713 | 0.021426 | 0.047236 |
| 6204334010 | 0.5042 | 0.010084 | 0.022231 |

[Wool and Products containing Wool Fibers]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 6204335010 | 0.0630 | 0.001261 | 0.002779 |
| 6204335020 | 0.0630 | 0.001261 | 0.002779 |
| 6204392010 | 0.5042 | 0.010084 | 0.022231 |
| 6204393010 | 0.0630 | 0.001261 | 0.002779 |
| 6204398020 | 0.5672 | 0.011344 | 0.025009 |
| 6204412010 | 1.0475 | 0.020950 | 0.046186 |
| 6204412020 | 1.0475 | 0.020950 | 0.046186 |
| 6204433010 | 0.4930 | 0.009860 | 0.021737 |
| 6204434010 | 0.4930 | 0.009860 | 0.021737 |
| 204434020 | 0.4930 | 0.009860 | 0.021737 |
| 6204434030 | 0.3081 | 0.006163 | 0.013587 |
| 6204434040 | 0.3081 | 0.006163 | 0.013587 |
| 6204443010 | 0.5042 | 0.010084 | 0.022231 |
| 6204444010 | 0.5042 | 0.010084 | 0.022231 |
| 6204444020 | 0.5042 | 0.010084 | 0.022231 |
| 6204510010 | 1.0318 | 0.020636 | 0.045495 |
| 6204510020 | 1.0318 | 0.020636 | 0.045495 |
| 6204532010 | 0.5159 | 0.010318 | 0.022747 |
| 6204592010 | 0.5159 | 0.010318 | 0.022747 |
| 6204593010 | 0.5159 | 0.010318 | 0.022747 |
| 6204593020 | 0.5159 | 0.010318 | 0.022747 |
| 6204594020 | 0.5804 | 0.011608 | 0.025591 |
| 6204611010 | 0.9645 | 0.019290 | 0.042527 |
| 6204611020 | 0.9645 | 0.019290 | 0.042527 |
| 6204619010 | 0.9645 | 0.019290 | 0.042527 |
| 6204619020 | 0.9645 | 0.019290 | 0.042527 |
| 6204619040 | 0.9645 | 0.019290 | 0.042527 |
| 6204632510 | 0.4822 | 0.009644 | 0.021261 |
| 6204692010 | 0.4822 | 0.009644 | 0.021261 |
| 6204692030 | 0.4822 | 0.009644 | 0.021261 |
| 6204696020 | 0.5425 | 0.010850 | 0.023921 |
| 6204699020 | 0.5426 | 0.010850 | 0.023921 |
| 6204699030 | 0.1808 | 0.003617 | 0.007974 |
| 6204699050 | 0.1808 | 0.003617 | 0.007974 |
| 6205102010 | 0.9645 | 0.019290 | 0.042527 |
| 6205102020 | 0.9645 | 0.019290 | 0.042527 |
| 6205301510 | 0.4822 | 0.009644 | 0.021261 |
| 6205903050 | 0.0603 | 0.001206 | 0.002659 |
| 6205904040 | 0.1206 | 0.002412 | 0.005317 |
| 6206203010 | 0.9645 | 0.019290 | 0.042527 |
| 6206203020 | 0.9645 | 0.019290 | 0.042527 |
| 6206402510 | 0.5425 | 0.010850 | 0.023921 |
| 6207992000 | 0.8627 | 0.017253 | 0.038036 |
| 6208920010 | 0.0616 | 0.001232 | 0.002716 |
| 6208920030 | 0.0616 | 0.001232 | 0.002716 |
| 6209100000 | 0.8260 | 0.016520 | 0.036420 |
| 6211310030 | 0.9453 | 0.018906 | 0.041680 |
| 6211310040 | 0.9453 | 0.018906 | 0.041680 |
| 6211310051 | 0.9453 | 0.018906 | 0.041680 |
| 6211330052 | 0.6302 | 0.012603 | 0.027785 |
| 6211410040 | 0.9453 | 0.018906 | 0.041680 |
| 6211410050 | 1.0083 | 0.020167 | 0.044459 |
| 6211410055 | 1.0083 | 0.020167 | 0.044459 |
| 6211410061 | 1.0083 | 0.020167 | 0.044459 |
| 6211430064 | 0.6302 | 0.012603 | 0.027785 |
| 6211430074 | 0.6302 | 0.012603 | 0.027785 |
| 6212900020 | 0.7472 | 0.014944 | 0.032946 |
| 6214102000 | 0.3503 | 0.007006 | 0.015446 |
| 6214200000 | 0.9340 | 0.018681 | 0.041184 |
| 6214300000 | 0.1168 | 0.002335 | 0.005149 |
| 6214400000 | 0.1168 | 0.002335 | 0.005149 |
| 6214900010 | 0.0584 | 0.001168 | 0.002575 |
| 6215900010 | 1.1675 | 0.023350 | 0.051478 |
| 6216008000 | 1.2056 | 0.024112 | 0.053157 |
| 6217109020 | 0.8627 | 0.017253 | 0.038036 |
| 6217109030 | 0.1232 | 0.002465 | 0.005434 |
| 6217909010 | 0.1232 | 0.002465 | 0.005434 |
| 6217909030 | 0.8627 | 0.017253 | 0.038036 |
| 6217909035 | 0.1232 | 0.002465 | 0.005434 |
| 6217909085 | 0.1232 | 0.002465 | 0.005434 |
| 6301200010 | 0.9620 | 0.019240 | 0.042417 |

[Wool and Products containing Wool Fibers]

| HTS | CF | Assessment | |
|---|---|---|---|
| | | $/lb | $/kg |
| 6301200020 | 0.9620 | 0.019240 | 0.042417 |
| 6301900030 | 0.1132 | 0.002264 | 0.004992 |
| 6302390010 | 0.9620 | 0.019240 | 0.042417 |
| 6304193040 | 0.9054 | 0.018109 | 0.039923 |
| 6304910050 | 0.7922 | 0.015845 | 0.034931 |
| 6304991000 | 1.1318 | 0.022636 | 0.049902 |
| 6304991500 | 1.1318 | 0.022636 | 0.049902 |
| 6304996010 | 1.1318 | 0.022636 | 0.049902 |
| 6501009000 | 1.3864 | 0.027728 | 0.061129 |
| 6503009000 | 1.3864 | 0.027728 | 0.061129 |
| 6505903090 | 0.8838 | 0.017677 | 0.038970 |
| 6505904090 | 0.8658 | 0.017316 | 0.038174 |
| 6505906040 | 0.4621 | 0.009242 | 0.020375 |

### §1280.313 Collecting persons for purposes of collection of assessments.

(a) Any person who is responsible for collecting an assessment pursuant to the Act and this subpart, including processors and any other persons who are required to remit assessments to the Board pursuant to this part, shall be a collecting person, except that a collecting person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder, shall pass the collected assessment on to the subsequent purchaser pursuant to the Order.

(b) Customs will collect the assessment at the time of importation from the importer or from any person acting as the principal agent, broker, or consignee for sheep, sheep products, wool, and products containing wool fiber identified by the HTS classification numbers in §1280.312.

(c) In cases where a producer or feeder sells sheep as part of a custom slaughter operation, the producer or feeder shall be the collecting person in the same manner as if the sheep were sold for slaughter.

(d) For the purposes of this section, in the event of a producer's, feeder's, or importer's death, bankruptcy, receivership, or incapacity, the representative of such producer, feeder, or importer or the producer's, feeder's, or importer's estate, or the person acting on behalf of creditors, shall be considered the producer, feeder, or importer.

### §1280.314 Remittance persons for purposes of remitting assessments.

(a) Each processor who makes payment to a producer, feeder, handler, or collecting person for sheep or wool purchased from the producer, feeder, handler, or collecting person shall be a remitting person and shall collect an assessment from the producer, feeder, handler, or other collecting person on sheep or wool sold by the producer, feeder, handler, or collecting person, and each such producer, feeder, handler, or collecting person shall pay such assessment to the processor and that processor shall remit the assessment to the Board;

(b) Each person who processes or causes to be processed sheep or sheep products of that person's own production, and markets such sheep or sheep products, shall pay an assessment on such sheep or sheep products at the time of sale at a rate equivalent to the rate established pursuant to §1280.224(d), Sheep Purchases, of the Order, for live sheep or §1280.225(d), Wool Purchases, for greasy wool, and shall remit such assessment to the Board;

(c) Each person who exports live sheep or greasy wool shall remit the assessment to the Board on such sheep or greasy wool at the time of export, at the rate established pursuant to §1280.224(d), Sheep Purchases, of the Order, for live sheep or §1280.225(d), Wool Purchases, for greasy wool.

### §1280.315 Remittance of assessments and submission of reports to the National Sheep Promotion, Research, and Information Board.

Each person responsible for remitting the assessment as described in §1280.314 shall remit the assessments and a report of assessments to the Board as follows:

(a) Reports. Each person who is responsible for remitting the assessment shall make reports on forms made available or approved by the Board. Such person shall prepare a separate report for each reporting period. Each report shall be mailed together with the applicable assessment amount to the Board pursuant to §1280.311(a). Each completed report shall contain

the following information, as applicable, including, but not limited to:

(1) Live sheep sold.

(i) The number of sheep purchased, initially transferred, or subject to the collection of assessment in any other manner, and the dates of such transactions;

(ii) The number of live sheep exported;

(iii) The amount of assessment remitted;

(iv) An explanation for the remittance of any assessment that is less than the pounds of sheep multiplied by the assessment rate; and

(v) The date an assessment was paid.

(2) Greasy wool sold.

(i) The amount of wool that is purchased, initially transferred or subject to the collection of assessment in any other manner, and the dates of such transaction;

(ii) The amount of greasy wool exported;

(iii) The amount of assessment remitted;

(iv) An explanation for the remittance of an assessment that is less than the pounds of greasy wool multiplied by the assessment rate; and

(v) The date an assessment was paid.

(b) Customs will transmit reports and assessments collected on imported sheep and sheep products to AMS according to an agreement between Customs and AMS.

### § 1280.316 Evidence of payment of assessments.

Each collecting person, except a producer or feeder who processes sheep or sheep products of the producer's or feeder's own production for sale, is required to give to the producer, feeder, handler, or collecting person from whom the collecting person collected an assessment written evidence of payment of the assessments. Such written evidence, which shall serve as a receipt, must contain the following information:

(a) Name and address of the collecting person;

(b) Name of producer or feeder who paid the assessment;

(c) Number of head of sheep sold;

(d) Total pounds of sheep or greasy wool sold;

(e) Total assessments paid by the producer or feeder; and

(f) Date an assessment was paid.

### § 1280.317 Books and records.

Any person subject to the requirements in § 1280.233, Books and Records, of the Order shall maintain and make available to the Secretary for at least 2 years beyond the fiscal period of their applicability such books and records as necessary to carry out the provision of the Order and these regulations.

### § 1280.318 OMB control numbers.

The control number assigned to the information collection requirements in Part 1280 by OMB pursuant to the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35) is OMB number 0581–0093.

## Subpart C—Procedures for Certification of Organizations and Nominations of Sheep Producers, Sheep Feeders, and Importers of Sheep and Sheep Products for Appointment to the National Sheep Promotion, Research, and Information Board

SOURCE: 61 FR 21051, May 9, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 33646, June 28, 1996, subpart C to part 1280 was suspended.

### § 1280.400 General.

The Secretary shall determine which organizations are certified as eligible to nominate sheep producers and producer alternates, sheep feeders, and importers of sheep and sheep products (excluding importers that import only raw wool), for appointment to the Board. The making and receiving of the nominations shall be conducted in accordance with this subpart and the Order.

### § 1280.401 Definitions.

As used in this subpart:

(a) The term *Act* means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111, Public Law 103–407, 108 Statute 4210, enacted

October 22, 1994, and any amendments thereto.

(b) The term *Board* means the National Sheep Promotion, Research, and Information Board.

(c) The term *carbonized wool* means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

(d) The term *Department* means the U.S. Department of Agriculture.

(e) The term *feeder* means any person who feeds lambs until the lambs reach slaughter weight.

(f) The term *importer* means any person who imports sheep or sheep products into the United States.

(g) The term *Livestock and Seed Division* means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

(h) The term *National feeder organization* means any organization of feeders that has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

(i) The term *person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(j) The term *producer* means any person, other than a feeder, who owns or acquires ownership of sheep.

(k) The term *raw wool* means greasy wool, pulled wool, degreased wool, or carbonized wool.

(l) The term *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 be delegated to act in the Secretary's stead.

(m) The term *sheep* means ovine animals of any age, including lambs.

(n) The term *sheep products* means products produced in whole or in part from sheep, including wool and products containing wool fiber.

(o) The term *State* means each of the 50 States.

(p) The term *unit* means each State, group of States or class designation that is represented on the Board.

(q) The term *United States* means the 50 States and the District of Columbia.

(r) The term *wool* means the fiber from the fleece of a sheep.

(s) The term *wool products* means products produced, in whole or in part, from wool and products containing wool fiber.

### §1280.402 Administration.

The Livestock and Seed Division shall have the responsibility of administering the provisions of this subpart.

### §1280.403 Certification of eligibility.

(a) *Sheep producer organizations. Requirements for certification.* The Secretary shall certify any sheep producer organization that the Secretary determines meets the criteria established under paragraphs (a) and (b) of this section to be eligible for certification to nominate producer members and alternate producer members to the Board. Certification for sheep producer organizations shall be based upon:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

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

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the aims and objectives of the Act.

(b) *Primary considerations.* A primary consideration in determining the eligibility of a producer organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

(c) *Feeder and importer organizations. Requirements for certification.* The Secretary shall certify any national feeder organization and qualified importer organization that the Secretary determines meets the following criteria as eligible to nominate feeders or importers to the Board:

(1) The organization's active membership includes a significant number of feeders or importers in relation to the total membership of the organization;

(2) There is evidence of stability and permanency of the organization; and

(3) The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(d) The Secretary may also consider additional information that the Secretary deems relevant and appropriate. The Secretary's determination as to eligibility shall be final.

### § 1280.404 Application for certification.

Any organization that meets the eligibility criteria for certification specified in § 1280.403 is entitled to apply to the Secretary for certification of eligibility to nominate sheep producers, sheep feeders, or importers of sheep and sheep products for appointment to the Board. The Secretary may require third-party verification of information submitted by organizations, in determining their eligibility. To apply, an organization must submit a completed ''Application for Certification of Organization'' form. Copies may be obtained from the Livestock and Seed Division; AMS–USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. (Telephone: 202/720–1115)

### § 1280.405 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 additional information in order to ascertain whether the organization may remain certified or eligible to make nominations, and may require third-party verification of information submitted by organizations in determining their eligibility to continue making nominations.

### § 1280.406 Notification of certification and the listing of certified organizations.

Organizations shall be notified in writing whether they are eligible to nominate sheep producers, feeders, or importers as members to the Board or not. A copy of the certification or eligibility determination shall be furnished to certified organizations. Copies shall also be available for inspection in the Livestock and Seed Division.

### § 1280.407 Solicitation of nominations for appointment to the Board.

In general, as soon as practicable after this subpart becomes operational, the Secretary shall solicit and obtain nominations for appointment to the initial Board from certified producer, feeder, and importer organizations.

(a) Initially established board. (1) *Producer and alternate nominations.* The Secretary shall solicit from organizations certified under § 1280.403 (a) and (b) nominations for each producer or alternate member seat on the initially established Board to which a unit is entitled. If no such organization exists, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(2) *Feeder and importer nominations.* The Secretary shall solicit, from organizations certified under § 1280.403(c), nominations for each feeder or importer member on the initially established Board to which a unit is entitled. If no such organization exists, the Secretary shall solicit nominations for appointment in such manner as the Secretary determines is appropriate.

(b) [Reserved]

### § 1280.408 Nomination of members for appointment to the Board.

(a) In general. All nominations to the Board shall be made in the following manner:

(1) *Producers.* The Secretary shall appoint sheep producer and alternate members to represent units as specified under § 1280.409 (a) and (b) of this subpart, from nominations submitted by organizations certified under § 1280.403. A certified organization may only submit nominations for producer representatives and alternates, if appropriate, from the membership of the organization for the unit in which the organization operates. To be represented on the Board, each certified organization must submit to the Secretary at least 1.5 nominations for each seat on

the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment. If a producer member and a producer alternate member are to be appointed to represent the unit, at least three nominations must be submitted for the two positions.

(2) *Feeders.* The Secretary shall appoint representatives of the feeder sheep industry to seats established under § 1280.409(c), from nominations submitted by qualified national organizations certified under § 1280.403 that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board for which the feeder sheep industry is entitled to representation.

(3) *Importers.* The Secretary shall appoint importers to seats established under § 1280.409(d) from nominations submitted by qualified organizations certified under § 1280.403 that represent importers of sheep and sheep products. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board for which importers are entitled to representation.

(4) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. The Secretary will solicit nominations for subsequent appointments, and the Board will secure the nominations from certified producer organizations. Certified feeder and importer organizations shall submit the names of feeder and importer nominees directly to the Secretary. Nominations should be initiated not less than 6 months before the expiration of the terms of the members whose terms are expiring, in the manner described in this section. In the case of vacancies caused by the death, removal, resignation, or disqualification of any member of the Board, the Secretary will appoint a successor from the most recent list of nominations for the position, from nominations submitted by the Board for producers or from certified feeder or importer organizations, for feeders and importers.

(5) Where there is more than one eligible organization that represents producers in a State or unit, or represents feeders, or importers, they may caucus and jointly nominate qualified persons for each position representing that State or unit on the Board for which a producer, feeder or importer member is to be appointed. If they cannot agree on any such nominations, or if no caucus is held, each eligible producer, feeder or importer organization may submit to the Secretary nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment to represent that unit.

(6) Nominations should be submitted in order of preference and, for the initial Board, in order of preference for staggered terms. If the Secretary rejects any nominations submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraphs (a), (b), or (c) of this section.

(b) *Official nomination forms.* A ''Nomination for Appointment to the National Sheep Promotion, Research, and Information Board'' must be used to nominate producers, feeders, or importers for appointment to the Board. An ''Advisory Committee Membership Background Information'' form must be completed by each nominee listed on the ''Nomination for Appointment to the National Sheep Promotion, Research, and Information Board'' form and must be attached to that form. Official nomination forms and additional information on nominations are available from the Marketing Programs Branch; Livestock and Seed Division; AMS–USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456 (Telephone: 202/720–1115).

(c) The Secretary may reject any nomination submitted under paragraph (a) of this section. If there are insufficient nominations from which to appoint members to the Board because the Secretary rejected the nominations submitted by a State or unit, the State or unit shall submit additional nominations, as provided in paragraph (a) of this section.

**§ 1280.409 Initial Board membership.**

(a) *Base membership.* The number of producer members appointed to the Board from each State or unit shall be allocated.

Alabama 1; Alaska 1; Arizona 1; Arkansas 1; California 5; Colorado 4; Connecticut 1; Delaware 1; Florida 1; Georgia 1; Hawaii 1; Idaho 2; Illinois 1; Indiana 1; Iowa 2; Kansas 1; Kentucky 1; Louisiana 1; Maine 1; Maryland 1; Massachusetts 1; Michigan 1; Minnesota 2; Mississippi 1; Missouri 1; Montana 5; Nebraska 1; Nevada 1; New Hampshire 1; New Jersey 1; New Mexico 2; New York 1; North Carolina 1; North Dakota 2; Ohio 1; Oklahoma 1; Oregon 2; Pennsylvania 1; Rhode Island 1; South Carolina 1; South Dakota 4; Tennessee 1; Texas 10; Utah 3; Vermont 1; Virginia 1; Washington 1; West Virginia 1; Wisconsin 1; and Wyoming 5.

(b) *Alternate members.* A unit represented by only one producer member may have an alternate producer member appointed to ensure representation at meetings of the Board.

(c) *Feeders.* The feeder sheep industry shall be represented by ten members.

(d) *Importers.* Importers shall be represented by 25 members.

**§ 1280.410 Length of appointment to the initial Board.**

When the Secretary appoints the members to the initial Board, the Secretary shall also specify the term of office for each member. To the extent practicable, one-third of the members shall serve for one year, one-third shall serve for two years, and one-third shall serve for three years. No person may serve more than two consecutive three year terms, except that elected officers shall not be subject to the term limitation while they hold office.

**§ 1280.411 Acceptance of appointment.**

Producers, feeders and importers nominated to the Board must confirm in writing their intention to serve if appointed, to disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board and to withdraw from participation in deliberations, decision-making, or voting on matters that concern such disclosed relationships.

**§ 1280.412 Verification.**

The Secretary shall have the right to examine at any time the books, documents, papers, records, files, and facilities of nominating units as the Secretary deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the unit is eligible to nominate sheep producers, feeders, or importers for appointment to the Board.

**§ 1280.413 Confidential treatment of information.**

All documents submitted in accordance with this subpart shall be kept confidential by all employees of the Department. Nothing in this section shall be deemed to prohibit the disclosure of such information so furnished or acquired as the Secretary deems relevant and then only in the issuance of general statements based upon the reports of a number of persons subject to the Order or statistical data collected therefrom, when such a statement or data does not identify the information furnished by any one person.

**§ 1280.414 Paperwork Reduction Act assigned number.**

The control number assigned to the information collection requirements in part 1280 by OMB pursuant to the Paperwork Reduction Act of 1980 is OMB 0581–0093.

## Subpart D—[Reserved]

## Subpart E—Procedures for the Conduct of Referendum

### Definitions

**§ 1280.601 Act.**

The term *Act* means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111; Public Law 103–407; 108 Statute 4210; as approved October 22, 1994, and any amendments thereto.

**§1280.602 Administrator.**

The term *Administrator* 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.

**§1280.603 Carbonized wool.**

The term *Carbonized wool* means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

**§1280.604 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.

**§1280.605 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 FSA County Committee or COC.

**§1280.606 Farm Service Agency County Executive Director.**

The term *Farm Service Agency County Executive Director* also referred as the ''FSA County Executive Director,'' 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 county FSA office, or the person acting in such capacity.

**§1280.607 Cooperative Extension Service.**

The term *Cooperative Extension Service,* also referred to as ''CES'' means the State partner in the Cooperative Extension Service system.

**§1280.608 Cooperative Extension Service Agent.**

The term *Cooperative Extension Service Agent,* also referred to as the ''CES Agent,'' means an employee of the Cooperative Extension Service.

**§1280.609 Cooperative Extension Service of the U.S. Department of Agriculture.**

The term *Cooperative Extension Service of the U.S. Department of Agriculture,* also referred to as ''CES,'' means the Federal component of the Cooperative Extension Service.

**§1280.610 Degreased wool.**

The term *Degreased wool* means wool from which the bulk of impurities has been removed by processing.

**§1280.611 Department.**

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

**§1280.612 Deputy Administrator.**

The term *Deputy Administrator* means the Deputy Administrator for Program Delivery and Field Operations, FSA, U.S. Department of Agriculture 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 Deputy Administrator's stead.

**§1280.613 Feeder.**

The term *Feeder* means a person who feeds lambs until the lambs reach slaughter weight.

**§1280.614 Greasy wool.**

The term *Greasy wool* means wool that has not been washed or otherwise cleaned.

**§1280.615 Importer.**

The term *Importer* means any person who imports sheep and sheep products into the United States.

**§1280.616 Order.**

The term *Order* means the Sheep and Wool Promotion, Research, Education, and Information Order.

**§1280.617 Person.**

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

**§ 1280.618 Producer.**

The term *Producer* means any person, other than a feeder, who owns or acquires ownership of sheep.

**§ 1280.619 Public notice.**

The term *Public notice* means information regarding a referendum which shall be provided by the Secretary, without advertising expenses, through press releases and by State and county CES offices and county FSA offices, by means of newspapers, electronic media, county newsletters, and the like. Such notice shall contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

**§ 1280.620 Pulled wool.**

The term *Pulled wool* means wool that is pulled from the skin of slaughtered sheep.

**§ 1280.621 Raw wool.**

The term *Raw wool* means greasy wool, pulled wool, degreased wool, or other carbonized wool.

**§ 1280.622 Referendum.**

The term *Referendum* means any referendum to be conducted by the Secretary pursuant to the Act where producers, feeders, and importers of sheep and sheep products, except an importer of only raw wool, shall be given the opportunity to vote.

**§ 1280.623 Registration period.**

The term *Registration period* means a 1 day period to be announced by the Secretary for registration of producers, feeders, and importers desiring to vote in a referendum. The registration period shall be the same day as the voting period.

**§ 1280.624 Representative period.**

The term *Representative period* means 12 consecutive months of calendar year 1994.

**§ 1280.625 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.

**§ 1280.626 Sheep.**

The term *Sheep* means ovine animals of any age, including lambs.

**§ 1280.627 Sheep products.**

The term *Sheep products* means products produced, in whole or in part, from sheep, including wool and products containing wool fiber.

**§ 1280.628 State.**

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

**§ 1280.629 Unit.**

The term *Unit* means each State, group of States, or class designation that is represented on the Board.

**§ 1280.630 United States.**

The term *United States* means the 50 States and the District of Columbia.

**§ 1280.631 Volume of production**

The term *volume of production* means the largest number of head of domestic sheep that a domestic sheep producer or sheep feeder entity continuously owned and that were located in the United States during any single consecutive 30-day period during the representative period. The term ''volume of production'' also means the number of head of imported live sheep or the number of live sheep equivalents that an importer imported into the United States during the representative period, excluding imported raw wool.

**§ 1280.632 Voting period.**

The term *Voting period* means a 1-day period to be announced by the Secretary for voting in the referendum.

**§ 1280.633 Wool.**

The term *Wool* means the fiber from the fleece of a sheep.

**§ 1280.634 Wool products.**

The term *Wool products* means products produced, in whole or in part, from wool and products containing wool fiber.

REFERENDUM

**§1280.650 General.**

(a) A referendum to determine whether eligible sheep producers, sheep feeders, and importers of sheep and sheep products approve the Order. Importers who only import raw wool are not eligible to vote in the referendum.

(b) The Order shall become operational only if the Secretary determines that the Order is approved by a majority of sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum or by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum who account for at least two-thirds of the production represented by those voting in the referendum.

(c) The initial referendum shall be conducted at the county CES offices.

(d) The FSA of the Department shall assist in the conduct of the initial referendum.

**§1280.651 Supervision of referendum.**

The Administrator shall be responsible for conducting the referendum in accordance with this subpart.

**§1280.652 Eligibility.**

(a) Eligible producers, feeders, and importers. Each person who was a sheep producer, sheep feeder, or importer of sheep and sheep products during the representative period is entitled to register and vote in the referendum. Each producer, feeder, and importer entity shall be entitled to cast only one ballot in the referendum. Importers who only import raw wool are not eligible to register and vote in the referendum.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer, feeder, or importer, or any guardian, administrator, executor, or trustee of a producer's, feeder's, or importer's estate, or an authorized representative of any eligible producer, feeder, or importer entity (other than an individual producer, feeder, 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 producer, feeder, or importer entity shall certify that he or 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 sheep production, sheep feeding, or the importation of sheep and sheep products as a producer, feeder, or importer entity, shall be entitled to only one vote, provided, however, that any member of a group may register to vote as a producer, feeder, or importer if he or she is an eligible producer, feeder, or importer separate from the group.

**§1280.653 Time and place of registration and voting.**

The referendum shall be held for one day on a date to be determined by the Secretary. Eligible persons shall register and vote following the procedures in §1280.656. Except for absentee ballots, registration and voting shall take place during the normal business hours of each county CES office.

**§1280.654 Facilities for registering and voting.**

Each county CES office shall provide:

(a) adequate facilities and space to permit producers, feeders, and importers to register and to mark their ballots in secret,

(b) a sealed box or other suitable receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times, and

(c) copies of the Order for review.

**§1280.655 Registration form and ballot.**

A ballot (Form LS–61) and a registration and certification form (Form LS–61–2) shall be used for voting in person. The information required on the registration and certification form includes name, address, telephone number, and county of voter residence. The form also contains the certification statement referenced in §1280.656(a)(1). The ballot requires producers, feeders and importers to check a ''yes'' or

''no'' and provides space to record volume of production. If a producer, feeder, or importer wishes to cast their ballot based on their volume of production, the voter must record their volume of production in the space provided on the ballot. A combined registration/certification and ballot form (Form LS–62) shall be used for absentee voting. The information required on the combined registration/certification and ballot form includes name, address, telephone number, and county of voter residence. Form LS–62 also contains the certification statement referenced in § 1280.656(b)(1) and the absentee ballot.

**§ 1280.656 Registration and voting procedures.**

(a) Registering and voting in-person.

(1) Each producer, feeder, and importer, except importers who import only raw wool, who wants to vote in a referendum shall register on the day of voting at the county CES office in which the producer's, feeder's, or importer's residence is located, or at the county CES office that serves the county in which the producer's, feeder's, or importer's residence is located. Producer, feeder, or importer entities other than individuals shall register at the county CES office in the county in which their headquarters office or business is located, or at the county CES office that serves the county in which the entities' headquarters office or business is located. Producers, feeders, and importers will be required to record on the in-person voter registration list (Form LS–61–3) their names and, if applicable, the name of the entity they represent before they receive a registration and certification form and ballot. To register, producers, feeders, or importers shall complete the registration and certification form (Form LS–61–2) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period;

(ii) the person voting on behalf of an entity referred to in § 1280.652 is authorized to do so; and

(iii) the volume of production listed on the ballot is a true and accurate representation.

(2) Each eligible producer, feeder, or importer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in § 1280.653 and on a date to be announced by the Secretary. Eligible persons who record their name and the entity they represent on the in-person voter registration list (Form LS–61–3) will receive a registration and certification form (Form LS–61–2) and a ballot (Form LS–61). Voting shall be conducted under the supervision of the county CES agent or designee. Voters will enter the information requested on the registration and certification form (Form LS–61–2) as indicated above. Producers, feeders, and importers will then mark their ballots to indicate ''yes'' or ''no'' and if voting volume of production record their volume of production in the space provided on the ballot. Voters shall place their completed ballots in an envelope marked ''SHEEP BALLOT,'' (Form LS–61–1) seal and place it in the completed and signed registration and certification form/envelope marked ''SHEEP REFERENDUM,'' (Form LS–61–2) seal that envelope and personally place it in a box marked ''Ballot Box'' or other suitable receptacle. A copy of the applicable in-person voter registration list (Form LS–61–3) prepared by the county CES office shall be provided to each FSA county office for in-person voter verification.

(b) Absentee voting. (1) Eligible producers, feeders, and importers who are unable to vote in person may request a combined registration/certification and absentee ballot form (Form LS–62) and two envelopes—one marked ''SHEEP BALLOT'' (Form LS–61–1) and the other marked ''SHEEP REFERENDUM'' (LS–62–1), by mail or in person from the county CES office in the county in which they reside or the county CES office that serves the county in which they reside, if individuals, or in which their main office is located, if a corporation or other entity. These forms and envelopes will be mailed by the county CES agent or designee to the address provided by the prospective voter. Only one absentee registration/certification form and absentee ballot will be provided to each eligible producer, feeder, or importer. The forms

must be requested during a specified time period which will be announced by the Secretary. The county CES office shall enter on the absentee voter request list (Form LS–62–2) the name, address and entity requesting an absentee ballot and the date the forms were requested. A copy of the applicable absentee voter request list (Form LS–62–2) prepared by the county CES office shall be provided to each FSA county office for absentee voter verification.

(2) To register, eligible producers, feeders, and importers must complete and sign the combined registration/certification form and absentee ballot (Form LS–62) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period,

(ii) if voting on behalf of an entity referred to in §1280.652, they are authorized to do so; and

(iii) the volume of production listed on the ballot is a true and accurate representation.

(3) A producer, feeder, or importer, after completing the absentee voter registration form and the ballot, shall remove the ballot portion of the combined registration/certification and absentee ballot form (Form LS–62) and seal the completed ballot in a separate envelope marked ''SHEEP BALLOT'' (Form LS–61–1) and place the sealed envelope in a second envelope marked ''SHEEP REFERENDUM'' (Form LS–62–1) along with the signed registration form. Producers, feeders, and importers shall legibly print their names on the envelope marked ''SHEEP REFERENDUM'' (Form LS–62–1), and mail or hand deliver it to the local county CES office of the county in which they reside or the county CES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed or hand delivered to the county CES office in the county in which its main office is located or the county CES office in the county serving the county in which its main office is located.

(4) Absentee ballots must be received in the county CES office by the close of business, 2 business days before the date of the referendum. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the ''SHEEP REFERENDUM'' envelope containing the registration form and ballot, the county CES agent or designee shall place it, unopened in a secure ballot box. The county CES agent or designee shall record receipt of the absentee vote on the absentee voter request list (Form LS–62–2).

(5) A person who casts an absentee ballot that is not recorded as being received or that is received after the deadline specified in this section may vote in person at the appropriate county CES office on the day of the referendum.

### §1280.657 List of registered voters.

The in-person voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) shall be available for inspection on the day of the referendum at the county CES office and subsequently at the FSA county office. They shall be posted during regular office hours in a conspicuous public location at the FSA county office on the second business day following the date of the referendum.

### §1280.658 Challenge of voters.

(a) Challenge period. On the day of the referendum, the names of voters challenged shall be reported to the CES county agent, who will refer them to the FSA county office. After that, the names of the challenged voters shall be referred directly to the FSA county office. A challenge may be made no later than the close of business on the second business day after the date of the referendum.

(b) Who may challenge. Any person may challenge a voter. Any person who wants to challenge must do so in writing and must include the full name of the individual or other entity being challenged. Each challenge of a voter must be made separately and each challenge must be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(c) Determination of challenges. The FSA County Committee or its representative, acting on behalf of the Administrator, shall make a determination concerning the challenge and shall

notify challenged producers, feeders, or importers as soon as practicable, but no later than five business days after the date of the referendum. If the FSA County Committee or its representative, acting on behalf of the Administrator, is unable to determine whether a person was a producer, feeder, or importer during the representative period, or verify a voter's recorded volume of production, it may require the person challenged to submit records such as sales documents, import documents, or other similar documents in order to demonstrate his or her eligibility or to prove that the person was a producer, feeder, or importer during the representative period and to verify that the recorded volume of production was accurately stated.

(d) Challenged ballot. The registration and certification form (Form LS–61–2) containing the ballots cast by producers, feeders, or importers voting in person who are challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. The SHEEP REFERENDUM envelopes (Form LS–62–1) containing absentee voter registration forms and absentee ballots of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers, feeders, and importers. A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative is not appealed within the time allowed for appeal or there has been a determination by FSA after an appeal.

(e) Appeal. A person declared to be ineligible to register and vote or whose recorded volume of production has been questioned by the FSA County Committee or its designee, acting on behalf of the Administrator, may file an appeal at the FSA county office within three business days after notification of such decision. Such person may be required to provide documentation such as sales documents, import documents, or similar documents in order to demonstrate his or her eligibility or verify the recorded volume of production. An appeal shall be determined by the FSA County Committee, or its designee, acting on behalf of the Administrator, as soon as practicable, but in all cases not later than the ninth business day after the date of the referendum. The FSA County Committee or its designee's determination on an appeal is final.

### § 1280.659 Receiving ballots.

A ballot shall be considered to have been received during the voting period if:

(a) it was cast in person in the county CES office prior to the close of business on the day of the referendum; or

(b) it was cast as an absentee ballot, and was received in the county CES office not later than two business days before the date of the referendum.

### § 1280.660 Canvassing ballots.

(a) Counting the ballots. The county CES agent or designee shall deliver the sealed ballot box, the in-person voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to the FSA county office by the close of business on the first business day following the date of the referendum. FSA county Executive Director and the county CES agent or designee shall check the registration forms and ballots of all voters against the in-person voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to determine properly registered voters. The ballots of producers, feeders, and importers voting in person whose names are not on the in-person voter registration list (Form LS–61–3), shall be declared invalid. Likewise, the ballots of producers, feeders, and importers voting absentee whose names are not on the absentee voter request list (Form LS–62–2) shall be declared invalid. All ballots of challenged voters declared ineligible or invalid shall be kept separate from the other ballots and shall not be counted as valid ballots. The valid ballots shall be counted on the tenth business day after the referendum date. FSA county office employees shall remove the ''SHEEP BALLOT'' envelope from the registration/certification form envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. After removing all ''Sheep Ballot'' envelopes, FSA county

employees shall open them and count the ballots. The ballots shall be counted as follows:

(1) Number of eligible producers, feeders, and importers casting valid ballots;

(2) Number of producers, feeders, and importers favoring the Order;

(3) Number of producers, feeders, and importers not approving the Order;

(4) Volume of production recorded by producers, feeders, and importers approving the Order;

(5) Volume of production of producers, feeders, and importers not approving the Order;

(6) Number of challenged ballots;

(7) Number of challenged ballots deemed ineligible;

(8) Number of invalid ballots; and

(9) Number of spoiled ballots.

(b) Invalid Ballots. Ballots shall be declared invalid if a producer, feeder, or importer voting in-person has failed to sign the voter registration list (Form LS–61–3) or an absentee voter's name is not recorded on the absentee voter request list (Form LS–62–2), or the registration form or ballot was incomplete or incorrectly completed.

(c) Spoiled Ballots. Ballots shall be considered spoiled if they are mutilated or marked in such a way that the ''yes'' or ''no'' vote is illegible. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) Confidentiality. All ballots shall be confidential and the contents of the ballots shall not be 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.

### §1280.661 FSA county office report.

The FSA county office shall notify the FSA State office of the results of the referendum. Each FSA county office shall transmit the results of the referendum in its county to the FSA State office. Such report shall include the information listed in §1280.660(a). The results of the referendum in each county may be made available to the public upon notification from the Deputy Administrator FSA that the final results have been released by the Secretary. A copy of the report of results shall be posted for 30 days in the FSA county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the FSA county office for a period of at least 12 months after the referendum.

### §1280.662 FSA State office report.

Each FSA State office shall transmit to the Deputy Administrator, FSA, a written summary of the results of the referendum received from all the 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 shall be certified by the FSA State Executive Director. The FSA State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months beginning upon notification from the Deputy Administrator, FSA, that the final results have been released by the Secretary.

### §1280.663 Results of the referendum.

(a) The Deputy Administrator, FSA, shall submit the results of the referendum to the Administrator. The Administrator shall prepare and submit to the Secretary a report of the results of the referendum. The results of any referendum shall be issued by the Department in an official press release and published in the FEDERAL REGISTER. State reports and related papers shall be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, Room 2606, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons as may be designated by the Deputy Administrator, FSA, or the Secretary.

### §1280.664 Disposition of ballots and records.

Each FSA county Executive Director shall place in sealed containers marked with the identification of the referendum the in-person voter registration list, absentee voter request list, voted

ballots, challenged registration/certification forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the FSA county Executive Director for a period of not less than twelve months after the referendum. If no notice to the contrary is received from the Deputy Administrator, FSA, by the end of such time, the records shall be destroyed.

**§ 1280.665 Instructions and forms.**

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

# 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.

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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

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AUTHORITY: 7 U.S.C. 1308, 1308–1, and 1308–2; 16 U.S.C. 3834.

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 |

[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.

## § 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) 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.

(f) 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.

**§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.
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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.

[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—SUSPENSION AND DEBARMENT

Sec.
1407.1 Purpose.
1407.2 Suspension and debarment.
1407.3 Scope.

AUTHORITY: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b).

SOURCE: 50 FR 12767, Apr. 1, 1985, unless otherwise noted.

### § 1407.1 Purpose.

This part prescribes the terms and conditions under which persons (i.e., an individual or any form of business entity, such as a proprietorship, partnership, corporation, association, or cooperative) may be suspended and debarred from contracting with the Commodity Credit Corporation (CCC) and from otherwise participating in programs administered or financed by CCC.

### § 1407.2 Suspension and debarment.

The provisions of 48 CFR 409.403 *et seq.* shall be applicable to all CCC suspension and debarment proceedings, except that the authority to suspend or debar is reserved to the Executive Vice President, CCC, or his designee.

### § 1407.3 Scope.

CCC suspension and debarment proceedings shall not be applicable to contracts entered into by CCC under its price support operations and other CCC programs with persons in their capacity as producers.

## 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 in the Finding Aids section of this volume.

## PART 1410—1991–2002 CONSERVATION RESERVE PROGRAM

### Subpart A—General Provisions

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1410.1 Applicability.
1410.2 Administration.
1410.3 Definitions.
1410.4 Maximum county acreage.
1410.5 Performance based upon advice or action of the Department.
1410.6 Access to land under contract.
1410.7 Division of program payments and provisions relating to tenants and sharecroppers.
1410.8 Payments not subject to claims.
1410.9 Assignments.
1410.10 Appeals.
1410.11 Scheme and device.
1410.12 Filing of false claims.
1410.13 Miscellaneous.

### Subpart B—Conservation Reserve Program

1410.101 General description.
1410.102 Eligible persons.
1410.103 Eligible land.
1410.104 Duration of contracts.
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1410.107 Conversion to trees.
1410.108 Restoration of wetlands.
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1410.111 Conservation plan.
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1410.118 Cost-share payments.
1410.119 Levels and rates for cost-share payments.
1410.120 Annual rental payments.
1410.121 Method of payment.
1410.122 State enhancement program payments.
1410.123 Transfer of land.
1410.124 Violations.
1410.125 Executed CRP contract not in conformity with regulations.

AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3831–3847.

SOURCE: 56 FR 15985, Apr. 19, 1991, unless otherwise noted.

### Subpart A—General Provisions

#### § 1410.1 Applicability.

The regulations in this part govern operation of the Environmental Conservation Acreage Reserve Program (ECARP) established by title XII of the Food Security Act of 1985 as amended. The ECARP shall consist of the Conservation Reserve Program (CRP) covered under subpart B of this part and the Wetlands Reserve Program (WRP) covered under subpart C of this part. With respect to the CRP, subpart B shall, unless otherwise provided for, only be applicable for contracts approved and bids for participation offered for enrollment periods after November 28, 1990. With respect to all other CRP contracts approved, and bids for participation offered, the provisions of part 704 of this title shall be applicable.

[56 FR 15985, Apr. 19, 1991, as amended at 61 FR 43945, Aug. 27, 1996]

#### § 1410.2 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), through the Deputy Administrator for Farm Programs, FSA. 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 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 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, 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) 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.

(f)(1) The erosion index (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) in accordance with the local field office technical guide or other guidelines deemed appropriate by the NRCS, except that no such determination by the NRCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

(2) CCC shall consult with the NRCS for such other technical assistance in the implementation of the ECARP as is determined by CCC to be necessary.

(g) State FSA committees, with NRCS, may develop a State ranking process to evaluate acreage based on State specific goals and objectives. Such STC's may choose between developing a State ranking process or utilizing a national ranking process. 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 shall consult with the Forest Service (FS) or the State Forestry Agency 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.

(i) CCC may consult with the Cooperative State Research, Education, and Extension Service (CSREES) to coordinate the related information and education program as deemed appropriate to implement the CRP.

[56 FR 15985, Apr. 19, 1991, as amended at 61 FR 43945, Aug. 27, 1996]

### §1410.3 Definitions.

(a) The terms defined in part 719 of this title 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 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 multiyear 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 of operation approved by the local Conservation District and CCC;

*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;

*Bid* means, unless the context indicates otherwise, the per acre rental payment requested by the owner or operator in such owner's or operator's offer to participate in the CRP;

*Commodity Credit Corporation (CCC)* shall refer to the corporation of that name which is an agency of the United States government maintained within the U.S. Department of Agriculture;

*Conservation District (CD)* means a subdivision of a State organized pursuant to an applicable State Conservation District Law or in instances where a conservation district does not exist, the State Conservationist of the Soil Conservation Service;

*Conservation plan* means the document describing and scheduling the practices which must be established and maintained on land placed in the CRP in order to achieve the desired environmental benefits on such land. The conservation plan shall include requirements such as the approved vegetative cover, silvicultural treatments, weed, insect, and pest control necessary for the establishment and maintenance of vegetative cover and any other information required by the Secretary;

*Contour grass strip* means a vegetation area that follows the contour of the land, whose width is determined by the NRCS local office Field Office Technical Guide and whose designation is included as a contour grass strip by a conservation plan required under this part;

*Cost-share payment* means the payment made by CCC to assist program participants in establishing the practices required in a contract, except where, in addition, a cost-share payment for maintenance is specifically authorized in this part in which case the term shall also include a maintenance cost-share payment;

*CRP contract* means the program contract including the applicable contract appendix, conservation plan and the terms of any required easement, if applicable, entered into between CCC and the participant. Such contract shall set forth the terms and conditions for participation in the CRP pursuant to this part;

*Deputy Administrator* means the FSA Deputy Administrator for State and County Operations;

*Designated 319 areas* means areas approved by States under the Clean Water Act, as amended, administered by EPA and designated by the Secretary of Agriculture as eligible for entry into the CRP;

*Erosion index* means the factor used to determine the erodibility of a soil by dividing the potential average annual rate of erosion for each soil by the predetermined soil loss tolerance (T) value for the soil;

*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, except that croplines will be considered to separate fields only in cases where the predominantly eligible cropland and farming practices divide the land into manageable units and it is likely, as determined by CCC, that such cropline is not subject to change during the duration of the contract;

*Field windbreak, shelterbelt,* and *living snowfence* mean a vegetative barrier with a linear configuration composed of trees or shrubs which are designated as such practices in a conservation plan and which are planted for the purpose of reducing wind erosion, snow control, and energy conservation;

*Filterstrip* means a strip or area of vegetation of a width determined appropriate for the purpose by the NRCS local office Field Office Technical Guide;

*FSA* means the Farm Service Agency of the United States Department of Agriculture;

*Highly erodible land* means land which is classified by NRCS as:

(i) Being predominantly Land Capability Classes II, III, IV, and V with:

(A) An average annual erosion rate of at least 2T or;

(B) A serious gully erosion problem as determined by the Deputy Administrator; or

(ii) Being predominantly Land Capability Classes VI, VII, or VIII; or

(iii) If trees are to be planted under the conservation plan, eroding at the rate of at least 2T; or

(iv) Having:

(A) An erodibility index equal to or greater than 8 for either wind or water erosion, and

(B) An erosion rate greater than T;

*Local FSA office* means the county office of the Farm Service Agency serving the county or combination of counties in the area in which the landowner's farm or ranch is located;

*Manageable unit* means a part of a field that could be farmed in a normal manner as a self-contained unit;

*NRCS* means the Natural Resources Conservation Service of the United States Department of Agriculture;

*Participant* means an owner or operator or tenant who has entered into a contract;

*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;

*Practice* means a conservation or water quality measure agreed to in the conservation plan to accomplish the desired program objectives.

*Predominantly highly erodible field* means:

(i) Except as provided in paragraph (ii) of this definition, a field in which at least 66⅔ percent of the land in such field is highly erodible;

(ii) A field on which the participant agrees to plant trees, as determined necessary by the Deputy Administrator to achieve overall program goals, which is at least 33⅓ percent highly erodible land.

*Soil Loss Tolerance (T)* means the maximum average annual soil loss specified as a tolerance level for a soil in the field office technical guide;

*Technical assistance* means the assistance provided in connection with the ECARP to owners or operators by a representative of the Department in classifying cropland, developing conservation plans, determining the eligibility of land, and implementing and certifying practices;

*Useful life easement* means a property interest acquired by CCC pursuant to this part in connection with a CRP contract which requires the maintenance of a practice for the useful life of such practice which period shall be specified by CCC to be 15 or 30 years depending on the practice specified. Practices requiring such easement shall be determined by the Deputy Administrator and shall include practices such as: living snow fences, windbreaks, shelterbelts, permanent wildlife habitat, wildlife corridors and filterstrips devoted to trees and shrubs. All such easements as may be required shall be in favor of the United States or CCC. The granting of such an easement shall be considered to meet the obligation of the contract only if the easement is superior to the rights of all other persons;

*Water cover* means flooding of land by water in order to develop or restore shallow water areas for wildlife enhancement;

*Wellhead* means the actual location of a well, as determined by CCC, for water being drawn for public use from the ground.

[56 FR 15985, Apr. 19, 1991, as amended at 61 FR 43945, Aug. 27, 1996]

### §1410.4 Maximum county acreage.

Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, the maximum acreage which may be placed in the ECARP 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 to an 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 Performance based upon advice or action of the Department.

The provisions of part 790 of this title, as amended, relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

### §1410.6 Access to land under contract.

Any representative of the Department, or designee thereof, shall have the right of access to:

(a) land which is the subject of an application for a program under this part,

(b) or land which is under contract or otherwise subject to this part and shall have the right 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 ECARP.

### § 1410.7 Division of program payments and provisions relating to tenants and sharecroppers.

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 shared in the risk of producing crops on land subject to such contract or agreement receive treatment deemed to be equitable in accordance with § 1413.150 of this chapter.

### § 1410.8 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 U.S. Government.

### § 1410.9 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, except that assignments may also be made to secure or pay pre-existing indebtedness.

### § 1410.10 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant in a program under this part may obtain a review of any administrative determination rendered under this program in accordance with the administrative appeal regulations at part 780 of this title.

(b) Determinations concerning land classification, erosion rates, or water quality ratings may be reviewed in accordance with procedures established under part 614 of this title or otherwise established by SCS.

### § 1410.11 Scheme and device.

(a) If it is determined by CCC that a participant in a program under this part has employed a scheme or device to defeat the purposes of this part, any part of any program payments otherwise due or paid such participant during the applicable period may be withheld or 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 land rental payments, and 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. A failure of full disclosure will be considered a scheme or device under this section.

### § 1410.12 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 crop year in which the false information or claim was filed. False information or false claims include 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.

### § 1410.13 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.

(d) Cropland acreage established and maintained in vegetative cover under CRP, including approved volunteer cover, shall retain its cropland classification for the period of time that the cover is maintained or as otherwise established by the Deputy Administrator.

[56 FR 15985, Apr. 19, 1991, as amended at 58 FR 4064, Jan. 13, 1993; 61 FR 43946, Aug. 27, 1996]

## Subpart B—Conservation Reserve Program

### §1410.101 General description.

(a) Under the CRP, the Commodity Credit Corporation (CCC) will enter into contracts with eligible producers to convert eligible land to a conserving use for a minimum of ten years in return for annual rental payments and cost-share assistance.

(b) Except as otherwise provided, a participant may, in addition to any payment under this subpart, receive cost share assistance, rental payments, or tax benefits from a State or subdivision of such State in return for enrolling lands in CRP.

### §1410.102 Eligible persons.

In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner or operator or tenant of eligible cropland and—

(a) If an operator of eligible cropland, must have operated such cropland for at least 1 year prior to the close of the applicable signup period and must provide satisfactory evidence that such person will be in control of such cropland for the full term of the CRP contract period; or

(b) If an owner of eligible cropland, must have owned such cropland for at least 1 year prior to the close of the applicable signup period, unless:

(1) The new owner acquired such cropland by will or succession as a result of the death of the previous owner;

(2) The only ownership change in the three year 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;

(3) As determined by the Deputy Administrator, the circumstances of the requisition are such as present adequate assurances that the new owner of such cropland did not acquire such cropland for the purpose of placing it in the CRP; or

(c) If a tenant, the tenant is a participant with an eligible owner or operator.

[56 FR 15985, Apr. 19, 1991, as amended at 61 FR 43946, Aug. 27, 1996]

### §1410.103 Eligible land.

(a) Except as otherwise provided in this section, in order to be eligible to be placed in the CRP, land must—

(1) Have been annually planted or considered planted to an agricultural commodity in 2 of the 5 crop years, from 1992 through 1996;

(2) Be physically possible to be planted in a normal manner, at the time of enrollment, to an agricultural commodity;

(3) Be a predominantly highly erodible field; and

(4) If in a redefined field, be a manageable unit which meets the minimum acreage requirements, as determined by the Deputy Administrator, for the county. This requirement shall not apply for areas, as specified in the contract, to be used for permanent wildlife habitat, filterstrips, contour grass strips, sod waterways, field windbreaks, shelterbelts, living snowfences, or vegetation on salinity producing areas.

(b) A field or portion of a field determined to be suitable for use as a filter strip may be eligible to be placed in the CRP, even if it does not meet the requirement of paragraph (a)(3) of this section. The participant must agree to grow permanent grass, forbs, shrubs or trees on such field or portion of such field. A field or portion of a field may be considered to be suitable for use as a filter strip only if it—

(1) Otherwise meets the requirements of paragraph (a) of this section;

(2) Is located adjacent to a stream having perennial flow, other waterbody of a permanent nature (such as a lake, pond, wetlands and sinkhole), or seasonal stream, or wetlands excluding such areas as gullies or sod waterways;

(3) 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; and

(4) Is 1.0 to 1.5 chain lengths (66 to 99 feet) in width. Such width may be adjusted, to the extent necessary to meet NRCS Field Office Technical Guide criteria, to accomplish the desired environmental effect.

(c) A field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by NRCS, may be eligible to be placed in the CRP, even if the field does not meet the requirement of paragraph (a)(3) of this section.

(1) In order for land to be eligible for enrollment in the CRP under paragraph (c) of this section, such land must otherwise meet the requirements of paragraph (a) of this section.

(2) Such land must in addition:

(i) Be expected to flood a minimum of once every 10 years; and

(ii) Have evidence of damage as a result of such scour erosion.

(3) To the extent practicable, only cropland areas of a field may be enrolled in the CRP under this paragraph. The entire cropland area of an eligible field may be enrolled if:

(i) The size of the field is 9 acres or less; or,

(ii) 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.

(4) If the full field is not eligible for enrollment under this paragraph that portion of the field eligible for enrollment shall be that portion of the cropland between the water body 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.

(5) Cropland approved for enrollment under this paragraph shall be planted to an appropriate tree species approved by NRCS, unless tree planting is determined to be inappropriate by NRCS, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover approved by NRCS and the Deputy Administrator.

(d) Notwithstanding paragraph (a)(3) of this section, the following land may also, as determined by the Deputy Administrator, be considered eligible for the CRP under the provisions of this subpart, provided that all other provisions of paragraph (a) of this section are met.

(1) Land 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 the Agricultural Water Quality Incentives Program (AWQIP).

(2) Land devoted to living snowfences, windbreaks, wildlife habitat, shelterbelts or filterstrips with trees or shrubs;

(3) Land devoted to newly created permanent grass waterways or contour grass sod strips created after November 28, 1990, which are established and maintained according to an approved conservation plan;

(4) Non-irrigated or irrigated cropland which produce, as determined by the Deputy Administrator, saline seeps or which are functionally related to such saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface.

(e) Federal lands, lands acquired by an agency of the Federal Government, or by a quasi-federal entity are ineligible for the CRP.

(f) Land otherwise eligible for the CRP shall not be eligible if the land is:

(1) Subject to a deed or other restriction prohibiting the production of agricultural commodities, unless otherwise approved by the Deputy Administrator; or

(2) Farmed wetlands which may be eligible for the Wetlands Reserve Program (WRP) under 7 CFR part 620, except this restriction shall not apply to small farmed wetlands contained in, and are a part of, fields that are otherwise eligible for CRP as determined by CCC.

[56 FR 15985, Apr. 19, 1991, as amended at 58 FR 4064, Jan. 13, 1993; 61 FR 43946, Aug. 27, 1996]

### §1410.104 Duration of contracts.

(a) Except as provided in paragraph (b) of this section, contracts under this subpart shall be 10 years in duration.

(b) In the case of land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors under the original terms of a contract subject to this subpart or for land devoted to such use under a contract modified under §1410.107, the participant may specify the duration of the contract. Such contracts must be at least 10 years and no more than a total of 15 years in length.

### §1410.105 Conservation priority areas.

(a) The watershed areas of the Chesapeake Bay region, Great Lakes region, and Long Island Sound region shall be considered as conservation priority areas for CRP purposes. The Deputy Administrator may designate other areas as conservation priority areas.

(b) State water quality agencies may submit an application for designation of other areas to the Deputy Administrator through the State ASC Committee.

(c) Watersheds shall be eligible for designation as a priority area only if the watershed has actual significant adverse water quality or habitat impacts related to activities of agricultural production.

(d) Conservation priority area designations 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 Secretary, if such areas no longer contain actual and significant adverse water quality or habitat impacts in association with agricultural production activities.

(e) In those areas designated as priority areas, under this section, special emphasis will be placed to maximize water quality and habitat benefits of the implementation of the CRP by promoting a significant level of enrollment of lands within such designated watersheds in the program as determined, by the Deputy Administrator, to be appropriate and consistent with the purposes of the program.

### §1410.106 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 §1410.107;

(2) Agricultural commodities are planted in accordance with an approved conservation plan in close proximity to such hardwood trees;

(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 total annual rental payments over the term of any contract modified under this section shall 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 established technical guidelines 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.

### § 1410.107 Conversion to trees.

An owner or operator who has entered into a contract under part 704 of this title as of November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, which are devoted to permanent cover, from such cover to hardwood trees (including alley cropping 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 to a term not to exceed 15 years.

(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 provide a useful life easement on such land to CCC for the useful life of such plantings.

(c) CCC shall, as it determines appropriate and in the public interest, 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 a cost share paid when the original cover was established, may not exceed the amount 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.

### § 1410.108 Restoration of wetlands.

An owner or operator who has entered into a contract under part 704 of this title as of November 28, 1990, on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, elect to transfer such eligible acres subject to such contract, which are devoted to an approved cover, from such contract to the wetland reserve program; provided that such offer for transfer occurs during the first or second available signup for intention period under the WRP for the State and agreed to by FSA. Transfers on offers submitted after the second available WRP signup period within a State will only be permitted if the owner agrees to refund all payments received under CRP since the close of the second available WRP signup period within the State;

(a) Contracts may only be converted under this section if:

(1) Such areas are determined suitable for the wetlands reserve program;

(2) Such owner or operator provides an easement in accordance with subpart C of this part covering such areas;

(3) There is a high probability, as determined by CCC, of successful restoration of such areas; and

(4) The restoration of such area otherwise meets the requirements of subpart C of this part.

(b) An owner or operator who has entered into a contract under part 704 of this title may, if approved by CCC, restore suitable acres to wetlands while under such contract without cost-share assistance under the CRP since water is an approved cover. The approved restoration shall become a part of the conservation plan for the contracted area.

[56 FR 15985, Apr. 19, 1991, as amended at 58 FR 4064, Jan. 13, 1993]

### § 1410.109 Obligations of participant.

All participants subject to a CRP contract must agree to:

(a) Carry out the terms and conditions of such CRP contract;

(b) Implement the conservation plan which is part of such contract in accordance with the schedule of dates included in such conservation plan unless CCC determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control;

(c) Establish temporary vegetative cover when required by the conservation plan or if, as determined by CCC, the permanent vegetative cover cannot be timely established;

(d) Reduce the aggregate total of crop acreage bases, allotments, and quotas 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. Crop acreage bases 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, pursuant to §1410.117, an extension of such protection;

(e) Not produce an agricultural commodity on highly erodible land, in a county which has not met or exceeded the acreage limitation under §1410.4, which was acquired on or after November 28, 1990 unless such land, as determined by CCC, has a history in the most recent five year period of producing an agricultural commodity other than forage crops;

(f) Comply with all requirements of part 12 of this title;

(g) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time in accordance with instructions issued by CCC in response to drought or other similar emergency;

(h) 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;

(i) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(j) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary, taking into consideration the needs of water quality and wildlife, as determined by CCC; and

(k) Be jointly and severally responsible for compliance with such contract and the provisions of this subpart 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 subpart.

### §1410.110 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 subpart;

(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; and

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP contract; and

(d) Permit grazing of grassed waterways on CRP land where the grazing is incidental to the gleaning of crop residues on fields where the contracted land is located, such incidental grazing is limited to the 7-month period in which grazing of conservation use acreage is allowed, as determined by CCC, in a State under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*), or after the producer harvests the grain crop of the surrounding field. Further, CCC must provide prior approval of the incidental grazing of the CRP in exchange for an applicable reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

[56 FR 15985, Apr. 19, 1991, as amended at 58 FR 4064, Jan. 13, 1993]

### §1410.111 Conservation plan.

(a) The applicant, in consultation with the NRCS and the local conservation district or another source as approved by the NRCS, shall develop the conservation plan for the land to be entered in CRP.

(b) The practices included in the conservation plan and agreed to by the participant must achieve the reduction in erosion necessary to maintain the productive capability of the soil, improvement in water quality, protection of a public well head or other environmental benefit 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) All conservation plans shall be subject to the approval of CCC.

[56 FR 15985, Apr. 19, 1991, as amended at 61 FR 43946, Aug. 27, 1996]

### § 1410.112 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all quantity and quality standards needed to:

(1) Establish permanent vegetative cover, including introduced or native species of grasses and legumes, forest trees, permanent wildlife habitat, field windbreaks, and shallow water areas for wildlife,

(2) Meet other environmental benefits, as applicable, for the contract period; and

(3) Accomplish other purposes of the program.

(b) Water cover is an eligible practice if approved by CCC for the enhancement of wildlife or otherwise, except that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes.

### § 1410.113 Signup.

Offers for contracts shall be submitted only during public signup periods as announced periodically by CCC, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems desirable.

### § 1410.114 Acceptability of offers.

(a) Producers will submit bids for the amounts they are willing to accept to enroll their acreage in the CRP. The bids will, to the extent practicable, be evaluated on a competitive basis in which the bids selected will be those where the greatest environmental benefits are generated for the Federal dollars expended.

(b) In evaluating contract offers, different factors, as determined by CCC, may be established from time to time for priority purposes to accomplish the goals of the program. Such factors may include, but are not limited to:

(1) Surface water quality;

(2) ground water quality;

(3) soil productivity;

(4) conservation compliance considerations;

(5) tree planting;

(6) 319 area designations; and

(7) conservation priority area designation for selection.

### § 1410.115 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 at the local FSA office during the applicable signup period.

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC.

(3) 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, except that such irrevocable period shall not be applicable for the first signup period under this subpart, and

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.

(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 or designee is authorized to approve CRP contracts on behalf of CCC.

### § 1410.116 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 during a crop year on all or part of the land subject to the CRP contract;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(5) Terminate contracts enrolled in CRP before January 1, 1995, which have

been in effect for at least 5 years. Contract acreage located within an average of 100 feet of a perennial stream or other permanent waterbody, on which a CRP easement is filed, that was enrolled under the wetland eligibility criteria established in signup periods 8 and 9, and contract acreage on which there exist the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the NRCS local Field Office Technical Guide, are not eligible for termination prior to the expiration date of the contract as provided in this paragraph: grass waterways; filter strips; shallow water areas for wildlife; bottomland timber established on wetlands; field windbreaks; and, shelterbelts. In addition, for any land for which an early termination is sought, the land must have an EI of 15 or less. With respect to terminations under this paragraph:

(i) The termination shall become effective 60 days from the date the participant(s) submit notification to CCC of the participant's desire to terminate the contract;

(ii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods providing the acreage otherwise meets the eligibility criteria established for that signup; and,

(iii) Participants shall be required to meet conservation compliance requirements of 7 CFR part 12 to the extent applicable to other land.

(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.

[56 FR 15985, Apr. 19, 1991, as amended at 60 FR 22458, May 8, 1995; 61 FR 43946, Aug. 27, 1996]

### §1410.117 Extended base protection.

(a) In the final year of the contract or renewable period, participants may, subject to approval by CCC, request to extend the preservation of cropland base and allotment history for 5 years, without payment. Such approval may be given by CCC only if participants agree to continue for that period 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 bonus payment shall be made that would not have been made under the original contract for its original term.

(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 shall be established by the State committee. In the event of a natural disaster, however, 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 the amount of cropland base and allotment history otherwise preserved under the contract or under an extension of the contract.

### §1410.118 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 subpart, cost-share payments may be made under the CRP only for the 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, and for which such owner or operator has received cost-share assistance from the Department or other Federal agency.

(d) Except as provided for under §1410.107, 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, but only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhanced water quality, 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) In the case of land devoted to hardwood trees, windbreaks, shelterbelts, or wildlife corridors under a contract subject to this subpart or in the case of land converted to such use under § 1410.107, CCC shall pay up to 50 percent of appropriate costs, as determined by CCC, to the participant for maintaining such plantings, including the cost of replanting if such plantings are lost for reasons beyond the control of the participant, during not less than the 2-year nor more than the 4-year period commencing on the date of such plantings.

(g) 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 required practice on land subject to such contract.

### § 1410.119 Levels and rates for cost-share payments.

(a) CCC may not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan except that CCC shall allow cost-shares for maintenance costs to the extent required by § 1410.118(f) and CCC shall determine the period and amount of such cost-shares.

(b) The average cost of performing a practice shall be determined by CCC. Recommendations of the State and county Conservation Review Groups as provided for under § 701.2 (a) and (f) of this title shall be considered in determining such cost. 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.

### § 1410.120 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 parts 1497 and 1498 of this chapter shall be applicable in making certain 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 prorated between the predecessor and the successor participants based on the actual days of ownership of the property as reflected in applicable appropriately filed land records.

(e) CCC may reject any and all offers received from applicants who had previously entered into CRP contracts with CCC if the total annual rental payments due under such prior contracts (excluding contracts entered into in accordance with § 1410.123) plus the total annual rental payments called for in the offer exceed $50,000.

### § 1410.121 Method of payment.

Except as provided in § 1410.122, payments made by CCC under this part may be made in cash, in kind, in commodity certificates, or in any combination of such methods of payment in accordance with part 1470 of this chapter, unless otherwise specified by CCC.

### § 1410.122 State enhancement program payments.

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 payment per year a person may receive under this subpart shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such program carried out by such State, political subdivision, or agency thereof which has been approved by the Secretary.

**§1410.123 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, 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) The following provisions shall be applicable if the new owner or operator becomes a successor to a CRP contract with CCC:

(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 §1410.120.

(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; and

(2) Unless, as approved by CCC where the new owner is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, must 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 the amount to be repaid to be reduced to the extent that such a reduction will not impair program operations and is deemed to be in the public interest. Provided however, no refund of rental payments and cost sharing payments shall 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 Fish and Wildlife Service.

(c) Federal agencies in 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.

**§1410.124 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 subsection:

(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 CCC determines such failure does not warrant termination of such contract, CCC may grant relief as CCC deems appropriate.

(c) CCC may also terminate a CRP contract if the participant agrees to such termination and CCC determines

such termination to be in the public interest.

(d) 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.

### § 1410.125 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, a modification of such contract may be made by mutual agreement. If the parties to such contract cannot reach agreement with respect to such modification, the CRP contract shall be terminated and all payments paid or payable under such contract shall be forfeited or refunded to CCC, except as may otherwise be allowed by CCC.

# PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON

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1412.501 Timing for Enrollment and Termination of Production Flexibility of Contracts.

AUTHORITY: 7 U.S.C. 7201 et seq.; and 15 U.S.C. 714b and 714c.

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.

### § 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 in paragraph (c) of this section. 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]

### § 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 by:

(1) September 30 of the current fiscal year, if producers on the contract remain the same, but payment shares change; or

(2) 30 days after the change is made on the farm but no later than September 30, 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]

## 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 made on December 15 or January 15, as requested by the producer. In order to receive an advance payment the producers on the farm must be in compliance with all of the requirements of the contract at the time of the advance payment.

(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.

### §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 lessor receives only a 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) If a lease provides for both a cash payment and a share of the crop or proceeds, the county committee will determine a normal cash lease amount by crop for the area. If the guaranteed production or cash lease payment is equal to or exceeds the normal cash lease established by the county committee for the area, then the lease shall be considered to be a cash lease.

(5) If the lease is a cash lease, the landlord is not eligible for a contract payment.

(6) For a lease providing both a cash payment and a share of the crop or proceeds, if the cash guarantee is less than the normal cash guarantee for the area, the lease shall be considered a share lease.

(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.

### § 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) 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 no later than September 30 of that fiscal year and subsequently agree to the division of contract payment.

## 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) A contract for farms whose Conservation Reserve Program contract terminates after August 1, 1996, shall be signed by a producer no later than November 30 of the fiscal year following the fiscal year the Conservation Reserve Program contract is terminated.

(e) A Conservation Reserve Program contract that is terminated:

(1) In fiscal year 1996, if the effective date of the Conservation Reserve Program contract termination is earlier than August 1, 1996, and the land that was subject to the Conservation Reserve Program contract is enrolled in a production flexibility contract, the owner or producer is eligible to receive both the 1996 production flexibility contract payment and a prorated Conservation Reserve Program payment.

(2) 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 payments or a prorated Conservation Reserve Program payment, but not both.

# PART 1414—INTEGRATED FARM MANAGEMENT PROGRAM OPTION

## Subpart A—General Provisions

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1414.27 Resource-conserving crops (RCC's) on acreage conservation reserve (ACR).
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## Subpart E—Program Payments

1414.36 Payments.
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AUTHORITY: 7 U.S.C. 5822.

SOURCE: 59 FR 59314, Nov. 16, 1994, unless otherwise noted.

## Subpart A—General Provisions

### §1414.1 General description of the program.

The regulations in this part set forth the terms and conditions for the Integrated Farm Management Program Option (IFM). The objectives of the IFM are to:

(a) Assist producers of agricultural commodities in adopting integrated, multiyear, site-specific farm management plans by reducing farm program barriers to resource stewardship practices and systems;

(b) Help producers improve and conserve soil and water on farms by converting land to resource conserving crop (RCC) rotations according to an approved IFM plan; and

(c) Not reduce farm program payments for producers participating in IFM as a result of planting a RCC as part of an RCC rotation on program crop payment acres.

### §1414.2 Applicability.

The regulations in this part are applicable to the integrated Farm Management Program (IFM), for the 1994 and 1995 crops of wheat, feed grains, upland cotton and rice, and set forth the terms and conditions under which producers of these commodities may enter into agreements with the Commodity Credit Corporation (CCC) to qualify for program benefits under the IFM.

### §1414.3 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.

The regulations set forth in part 12 of this title are applicable to this part.

### §1414.4 Administration.

(a) The provisions of §1414.4 of this chapter shall be applicable to this part, except as otherwise provided in this section.

(b) The Soil Conservation Service (SCS) shall provide technical assistance to the producer for planning and implementing the resource-conserving crop rotation, erosion control, water management, and water quality components of the plan, and shall provide such other technical assistance in the implementation of the IFM as determined necessary.

(c) The Extension Service (ES) shall coordinate the related information and education program concerning implementation of the IFM.

### §1414.5 Performance based upon advice or action of county or State Committee.

The provisions of part 790 of this title with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

### §1414.6 Appeals.

The appeal regulations set forth in part 780 of this title are applicable to this part.

### §1414.7 Paperwork Reduction Act assigned numbers.

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. 35 and an OMB control number has been assigned.

### §1414.8 Definitions.

The terms defined in part 1413 of this chapter and part 719 of this title shall be applicable to this part except as otherwise provided in this section.

*Alternative crops* means experimental and industrial crops grown in arid and semiarid regions that conserve soil and water, as determined by FSA. Certain alternative crops are approved for RCC use for 1994.

*Conservation plan* means the document containing the decisions of producers with respect to the location, land use, tillage systems and conservation treatment measures and schedule of implementation. The conservation plan also includes plans which have been established on highly erodible cropland in order to control erosion on such land.

*ES* means the Extension Service, an agency of the United States Department of Agriculture which is generally responsible for coordinating the information and educational programs of the Department.

*Farming operations and practices* includes the integration of crops and crop-plant variety selection, rotation

practices, tillage systems, soil conserving and soil building practices, nutrient management strategies, biological control and integrated pest management strategies, livestock production and management systems, animal waste management systems, water and energy conservation measures, and health and safety considerations.

*Grass* means perennial grasses commonly used for haying or grazing.

*Highly erodible land* means land that has an erodibility index of 8 or more.

*Integrated farm management plan (plan)* means a comprehensive, multiyear, site-specific plan that meets the requirements of § 1414.12.

*Legume* means forage legumes (such as alfalfa or clover) or any legume grown for use as forage or green manure, but not including any bean crop from which the seeds are harvested.

*Resource conserving crop* (RCC) means legumes, legume-grass mixtures, legume-small grain mixtures, legume-grass-small grain mixtures, and alternative crops, including such failed crop if the crop was planted in a timely, workmanlike manner and failed because of a natural disaster or other condition beyond the control of the producer.

*Resource-conserving crop rotation* means a crop rotation that includes at least one resource-conserving crop that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves water.

*SCS* means the Soil Conservation Service, an agency within the United States Department of Agriculture which is generally responsible for providing technical assistance in matters of soil and water conservation and for administering certain conservation programs of the Department.

*Small grain* shall not include malting barley or wheat, except for wheat interplanted with other small grain crops for nonhuman consumption.

### § 1414.9 Acreage enrollment.

(a) To the extent practicable, the total acreage enrolled in the program shall be limited to no less than 3,000,000 and no more than 5,000,000 acres of cropland during each of the calendar years 1991 through 1997.

(b) Because of the limitation in paragraph (a) of this section, acreage will be allocated to States and will be available to participants on a first-come-first-served basis.

## Subpart B—Agreement and Enrollment Provisions

### § 1414.10 Eligibility.

To be eligible to participate in the IFM, a producer must:

(a) Prepare a plan for approval by SCS;

(b) Actively apply the terms and conditions of the plan;

(c) Devote to a resource-conserving crop, on the average through the life of the agreement, not less than 20 percent of each crop acreage base (CAB) on a farm enrolled under such program;

(d) Comply with the terms and conditions of any annual acreage limitation program in effect for each CAB on a farm enrolled in the integrated farm management program;

(e) Keep such records as FSA may require; and

(f) Timely submit a report of acreage in accordance with part 718 of this title that lists all crops and land uses which are subject to the agreement for all cropland on the farm for the crop year.

### § 1414.11 Agreements.

(a) A producer shall enter into an agreement with CCC for a period of not less than 3 years nor more than 5 years, which may be renewed upon mutual agreement between CCC and the producer.

(b) Eligible producers may offer to enter into an agreement for any or all CAB's on the farm with CCC by executing such agreement and submitting it to the county FSA office where the records for the farm are maintained not later than a date specified in the announcement of the annual acreage reduction program.

(c) The agreement shall provide that producers on the farm must agree to devote to a resource-conserving crop, on the average through the life of the agreement, not less than 20 percent of each CAB on a farm enrolled under such program.

(d) The agreement shall provide that producers on the farm shall comply

with the terms and conditions of any annual acreage reduction program in effect for each CAB on a farm contracted in IFM.

(e) The agreement shall contain such other provisions as CCC determines appropriate to carry out the program established by this part.

(f) The agreement shall provide for payment of liquidated damages and termination in the event that the operator or any other producers on the farm fail to comply with their obligations under the agreement.

(g) Approved agreements expiring by the crop year 1995 may be renewed once, at the option of the producer, in the crop year that such agreement expires for a period of 3, 4, or 5 years. Such agreements expiring after the 1997-crop year are not renewable.

(h) IFM agreements may be canceled by the producer before the end of the acreage reduction program signup period in the year the CCC–406 is signed.

(i) If a producer enrolls into the conservation reserve program for the current program year, in accordance with part 1410 of this chapter:

(1) The IFM agreement and the acreage reduction program agreement shall be canceled;

(2) A new IFM agreement may be filed within 15 calendar days after the date of notification to the producer of the revised CAB's, and

(3) Minimum required resource conservation crop acreage shall be recomputed using the effective CAB after the reduction of such CAB for participation in the conservation reserve program.

### § 1414.12 Integrated farm management plan.

(a) In implementing the provisions of this part, FSA shall:

(1) Provide the producer and SCS:

(i) CAB information; and

(ii) The minimum required resource-conserving crop acreage.

(2) Provide the producer:

(i) The annual acreage reduction program options relative to program planning decisions, and

(ii) Assistance in evaluating acreage reduction program options in conjunction with the plan;

(3) Provide SCS a copy of the producer's report of acreage; and

(4) Provide SCS a copy of the farm's acreage reduction program agreement and IFM agreement approved by the county committee.

(b) In implementing the provisions of this part, ES shall provide:

(1) Assistance to the producer, as requested, in developing integrated pest management guidelines if they are part of the plan;

(2) Assistance to the producer, as requested, in collecting and analyzing soil tests and in developing nutrient management guidelines if they are part of the plan;

(3) Assistance to the producer, as requested, with farm management recordkeeping; and

(4) Advice for maximizing the utilization of IFM to their farm operation.

(c) In implementing the provisions of this part, SCS shall:

(1) Develop the plan with the assistance of the producer;

(2) Assemble the various components of the plan; and

(3) Provide technical assistance to the producer for planning and implementing the conservation plan, erosion control, water management, and water quality components of the plan;

(4) Spot check the plans to assure that the elements contained in the plan have been implemented and meet technical standards; and

(5) Assist the producer in revising the plan to address changes in farm operations.

(d) The plan will contain elements that address:

(1) The specific acreage and CAB's enrolled;

(2) Acreage and location of the resource-conserving crop for each year of the agreement;

(3) Scheduling practices for the implementation, improvement, and maintenance of the resource-conserving crop rotation;

(4) A description of the farming operations and practices to be implemented and the impact of those practices on:

(i) Maintenance or enhancement of the overall productivity and profitability of the farm;

(ii) Erosion, soil fertility, and soil physical properties;

(iii) Water supplies; and

(iv) Federal, State, and local requirements designed to protect soil, wetlands, wildlife habitat, groundwater, and surface water; and

(5) The coordination of all soil and water resource plans applicable to the enrolled acreage; and

(6) Other provisions as provided by this part.

### § 1414.13 Displacement of tenants or lessees.

(a) In addition to the regulations relating to tenants and sharecroppers as set forth in § 1413.107 of this chapter, agreements and plans that will result in the involuntary displacement of farm tenants or lessees by landowners through the removal of substantial portions of the farm from production of a commodity shall not be approved.

(b) In the case of any tenant or lessee who has rented or leased the farm (with or without a written option for annual renewal or periodic renewals) for a period of 2 or more of the immediately preceding years, the refusal by a landlord, without reasonable cause other than simply for the purpose of enrollment in the program, to renew such rental or lease shall be considered as an involuntary displacement in the absence of a written consent to such nonrenewal by the tenant or lessee.

### § 1414.14 Successors in interest.

(a) The successor in interest provisions of § 1413.51 of this chapter are applicable to this part, except as otherwise provided in this section.

(b) Successors not wanting to continue participation in IFM may terminate the IFM agreement without the assessment of liquidated damages, after the year in which the succession occurs.

### § 1414.15 Misrepresentation and scheme or device.

The misrepresentation and scheme and device provisions set forth in § 1413.52 of this chapter are applicable to this part.

## Subpart C—Bases and Yields

### § 1414.21 Bases and yields.

CAB's or farm program payment yields shall not be reduced as a result of the planting of a RCC as part of an RCC rotation implemented under the IFM.

### § 1414.22 Reconstitution of farms.

The reconstitution regulations set forth in part 719 of this title are applicable to this part.

## Subpart D—Resource-Conserving Crop Provisions

### § 1414.27 Resource-conserving crops (RCC's) on acreage conservation reserve (ACR).

(a) Acreage devoted to RCC's as a part of an RCC rotation under this program may also be designated as ACR for the purpose of fulfilling any provisions under any acreage limitation program. The ACR must meet the minimum size and width requirements as set forth in § 1413.61 of this chapter.

(b) ACR acreage devoted to perennial cover, on which cost-share assistance for the establishment of the perennial cover has been provided, shall not be credited towards the producer's RCC requirement under an agreement.

(c) 50 percent of the RCC acreage designated as ACR may be hayed and grazed any time during the entire year. The remaining acreage designated as ACR may be hayed and grazed, except during the 5-month period during which haying and grazing of ACR is not allowed. The remaining acreage designated as ACR that include a small grain (other than barley, oats, and wheat), may be hayed and grazed after the small grain is harvested. Haying includes silage, forage, haylage, and green chop.

(d) Barley, oats, or wheat, as part of an RCC, on ACR may not be harvested in kernel form.

(e) Other small grains that are part of an RCC and other RCC's on ACR acreage may be harvested in kernel form.

### § 1414.28 Resource-conserving crops on payment acres.

(a) Program payments with respect to acreage enrolled in the program shall not be paid to a producer if such producer hays or grazes such acreage (excluding acreage designated as ACR) during the 5-month period in which

haying and grazing of conserving use acres is not allowed under the provisions of § 1413.66 of this chapter, unless the crop planted on such acreage includes a small grain and the producer harvests the small grain crop in kernel form.

(b) Acreage planted to an RCC, which is used to determine the producer's deficiency payment, may be harvested in kernel form.

(c) CAB acreage devoted to RCC's as part of a RCC rotation shall be credited as planted and considered planted acreage to the program crop in the priority order as designated by the producer.

(d) The COC shall not reduce crop program payment yields as a result of a producer planting an RCC on CAB acreage.

[59 FR 59314, Nov. 16, 1994, as amended at 60 FR 44258, Aug. 25, 1995]

### § 1414.29 Resource-conserving crops on other acreage.

Acreage that is devoted to RCC's and not designated in accordance with §§ 1414.27 and 1414.28 may be designated as conserving use acres if all eligibility requirements are met in accordance with § 1413.10 of this title, and may be hayed and grazed throughout the crop year but shall not be harvested for grain or seed.

### § 1414.30 Traditionally underplanted acreage and reduction of payment acres.

(a) RCC's planted on program payment acreage shall be eligible for program payments if the planting of such RCC is part of an RCC rotation as specified in the plan.

(b)(1)(i) Traditionally underplanted acreage (TUA) means the difference in a particular year between the producer's CAB and:

(A) The total of the acreage planted to the program crop,

(B) Approved as prevented planted, and,

(C) For participating crops, the part of the CAB subject to the required ACR. If the producer is using the provisions set forth in §§ 1413.41 or 1413.42 of this chapter, traditionally underplanted acreage means 8 through 15 percent, as applicable, of the producer's permitted acreage for such year.

(ii) Traditionally underplanted acreage shall be determined by using the average of the calculation in paragraph (b) of this section for the 3 years prior to enrollment in IFM.

(2) If a rotation CAB has been established for a crop, and the rotation cycle includes zero acreage in the rotation, the previous three years with CAB's greater than zero shall be used.

(c) Producers enrolled in an RCC rotation shall not be eligible to receive payment for the amount that the average number of traditionally underplanted acreage of a crop exceeds the normal flex acreage for such crop, in accordance with § 1413.43 of this chapter.

[59 FR 59314, Nov. 16, 1994, as amended at 60 FR 44258, Aug. 25, 1995]

## Subpart E—Payment Provisions

### § 1414.36 Payments.

Farm program payments of participants in IFM shall not be reduced as a result of planting a RCC as part of a RCC rotation on payment acres. Payments shall be made in accordance with part 1413 of this title.

### § 1414.37 Offsets and assignments.

The offset and assignment regulations set forth in parts 1403 and 1404 of this chapter are applicable to this part.

# PART 1415—OPTIONS PILOT PROGRAM

## Subpart A—General Provisions

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1415.1 General description of the program.
1415.2 Administration.
1415.3 Appeals.
1415.4 Performance based upon advice or action of county or State Committee.
1415.5 Compliance with part 12 of this title, highly erodible land and wetland provisions.
1415.6 Paperwork Reduction Act assigned numbers.

## Subpart B—Definitions Used in This Part

1415.9 Definitions.

## Subpart C—Agreement and Enrollment Provisions

1415.13 Eligibility.

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1415.15 Agreements.

### Subpart D—Payments and Documentation

1415.20 Premium and incentive payments.
1415.21 Documentation.
1415.22 Brokerage accounts, fees and charges.
1415.23 Other production.
1415.24 Payment limitation.
1415.25 Disaster benefits on enrolled bushels.
1415.26 Successors in interest.
1415.27 Reconstitution of farms.
1415.28 Misrepresentation and scheme or device.
1415.29 Offsets and assignments.

AUTHORITY: 7 U.S.C. 1421 Note; 15 U.S.C. 714b and 714c.

SOURCE: 59 FR 59317, Nov. 16, 1994, unless otherwise noted.

## Subpart A—General Provisions

### § 1415.1 General description of the program.

(a) The regulations in this part set forth the terms and conditions for the Options Program. The purpose of the Options Program was to conduct research necessary to:

(1) Ascertain whether futures options trading would provide reasonable protection to producers from fluctuations in the value of the commodities they produce;

(2) Ascertain whether producers will accept and fully utilize this method of price protection if information is provided to the producers concerning its proper use; and

(3) Determine the effect widespread adoption of such futures options trading program would have on commodity prices.

(b) The Options Program provides Federal support for commodities by helping producers purchase put options contracts for their crops. Producers participating in the Options Program receive a subsidy to cover the premium for the purchase of put options at strike prices equivalent to the target price or the loan rate for the commodity.

(c) Producers who choose to participate in the target price put option agree to forego deficiency payments and loan benefits on the bushels participating in the target price put option program. Producers who choose to participate at the loan rate equivalent strike price agree to forego loan benefits on the bushels enrolled in the loan rate put option.

### § 1415.2 Administration.

(a) The provisions of 1413.4 of this chapter shall be applicable to this part, except as otherwise noted in this section.

(b) The Extension Service (ES) shall provide an educational program for the Options Program that will explain:

(1) Program parameters;

(2) Fundamentals of options;

(3) Executing put option purchases;

(4) Cash pricing goals and marketing plan;

(5) Executing the cash marketing plan; and

(6) Offsetting options positions.

(c) ES shall, assisted by representatives of county Farm Service Agency (FSA) offices:

(1) Conduct educational meetings for all interested producers in a participating county;

(2) Prepare an informational video for producers to view; and

(3) Encourage producers to visit the local ES office to obtain information about the Options Program.

### § 1415.3 Appeals.

The appeal regulations set forth in part 780 of this title are applicable to this part.

### § 1415.4 Performance based upon advice or action of county or State committee.

The provisions of part 790 of this title, with respect to performance based upon action or advice of any authorized representative of the Secretary, shall be applicable to this part.

### § 1415.5 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title, Highly Erodible Land and Wetland Conservation, are applicable to this agreement. Each person who violates such provisions shall refund any premium or incentive payment received

for such crops on the farm participating in this program for which such person has an interest.

### § 1415.6 Paperwork Reduction Act assigned numbers.

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. 35 and OMB number 0560–0092 has been assigned.

## Subpart B—Definitions Used in This Part

### § 1415.9 Definitions.

The terms defined in parts 719 of this title and 1413 of this chapter shall be applicable to this part, except as otherwise provided in this section.

*Agreement* means form CCC–300, Options Program Agreement.

*CBOT* means the Chicago Board of Trade.

*Exercise* means the action taken by the holders of put options if they wish to sell the underlying futures contract.

*Expiration Date* means the last date on which the option may be exercised. Although options expire on a specified date during the month before the specified month, an option on a December futures contract is referred to as a December option, because the exercise on this contract would lead to the creation of a December futures position.

*KCBOT* means the Kansas City Board of Trade.

*MGE* means the Minneapolis Grain Exchange.

*Premium* means the price of an option contract determined by open outcry between buyers and sellers on the trading floor of a commodity exchange. The premium does not include related brokerage commission fees. The premium is the maximum amount of potential loss to which the option buyer may be subject.

*Premium payment* means the reimbursement from Commodity Credit Corporation (CCC) to the producer for the purchase price paid by the producer for a put option, not including brokerage commission fees.

*Price support equivalent strike price* means the strike price that would give producers an expected return on the options market equivalent to an amount they would have received by pledging the commodity for a CCC price support loan.

*Pricing* means providing documentary evidence of the establishment of a monetary value for a commodity through contract or bill of sale.

*Producer* means, as determined in accordance with part 1413 of this chapter, and as used in this agreement, both the ''operator'' and other producers of the crop on the farm.

*Program* means the Options Pilot Program.

*Put Option* means an option that gives the option buyer the right to sell the underlying futures contract at the strike price on or before the expiration date.

*Sale* means the transfer of title.

*Strike Price* means the price at which the holders of a put option may choose to exercise their right to sell the underlying futures contract.

*Target price equivalent strike price* means the strike price that would give producers an expected return on the options market equivalent to an amount they would receive in deficiency payments and loan benefits.

[59 FR 59317, Nov. 16, 1994, as amended at 60 FR 44258, Aug. 25, 1995]

## Subpart C—Agreement and Enrollment Provisions

### § 1415.13 Eligibility.

(a)(1) This program is available to producers of:

(i) 1995 corn and soybeans in Champaign, Logan, and Shelby Counties in Illinois, and Buffalo, Hamilton, and Nemaha counties in Nebraska;

(ii) 1995 corn in Carroll, Clinton, and Tippecanoe Counties in Illinois, Boone, Grundy, and Hardin Counties in Iowa, and Auglaize, Darke, and Wood Counties in Ohio.

(iii) 1995 hard red winter wheat in Ford, Sumner, and Thomas Counties in Kansas, and Buffalo, Hamilton, and Nemaha Counties in Nebraska,

(iv) 1995 hard red spring wheat in Barnes, Cass, and Grand Forks Counties in North Dakota, and

(v) 1995 soft red winter wheat in Auglaize, Darke, and Wood counties in Ohio.

(2) Participating farms must be administratively located in one of the selected counties.

(b) In order to participate at the target price equivalent strike price level and receive payments, a producer must enroll and comply in the annual ARP for the crop.

(c) Such producer shall be determined ''actively engaged'' in farming in accordance with 7 CFR part 1497.

(d) In order to participate at the price support equivalent strike price level:

(1) For corn and wheat, a producer must enroll and comply in the annual acreage reduction program for the crop;

(2) For soybeans, the producer must accurately report and certify the soybean acreage planted in accordance with part 718 of this title.

(e) The producer is not required to maintain beneficial interest, as determined in accordance with § 1421.5(c) of this chapter, in the crop after it is priced to maintain the put option.

[59 FR 59317, Nov. 16, 1994, as amended at 60 FR 44258, Aug. 25, 1995]

### § 1415.14 Participation choices.

(a) Producers may participate in the Options Program at levels that are alternatives to either:

(1) Deficiency payments and loan program protection, or

(2) Loan program protection.

(b) Producers who choose the ''deficiency payments'' alternative will enroll production in the Options Program as ''target price bushels'' and agree to forego deficiency payments, price support benefits and loan deficiency payments on any enrolled bushels.

(c) Producers who choose the ''loan program protection'' alternative will enroll production in the Options Program as ''price support bushels'' and agree to forego price support benefits and loan deficiency payments on any enrolled bushels.

(d) Production can be enrolled at either the target price or price support level, but not both. However, a producer may enroll some production at each level.

### § 1415.15 Agreements.

(a) Eligible producers may enter into a agreement to participate with CCC by executing and submitting form CCC–300, Options Program Agreement, to the county FSA office where the records for the farm are maintained, not later than a date specified in the announcement of the sign-up period for the Options Program, which will be held in conjunction with signup for the acreage reduction program (ARP).

(b) The agreement shall provide that producers on a farm must agree to:

(1) (i) Attend not less than one informational session developed by the Cooperative Extension Service of the United States Department of Agriculture (USDA);

(ii) For the target price equivalent strike price level for corn, purchase at least one December 1995 CBOT put option on or before June 15, 1995; for wheat in Kansas and Nebraska, purchase at least one September 1995 KCBOT put option on or before May 15, 1995; for wheat in North Dakota, purchase at least one September 1995, MGE put option on or before May 15, 1995; and for wheat in Ohio, purchase at least one September 1995 CBOT put option on or before May 15, 1995.

(iii) Forego deficiency payments and CCC price support loan and loan deficiency benefits with respect to the bushels enrolled in the program; and

(iv) Forego participation at the price support equivalent strike price level with respect to such bushels.

(2) (i) For price support participation, purchase at least one March 1996 CBOT put option at a strike price equivalent to the county price support price for corn;

(ii) For soybeans, purchase at least one March 1996 CBOT put option contract at a strike price equivalent to the county soybean price support price;

(iii) For wheat producers in Kansas and Nebraska, purchase at least one December 1995 KCBOT put option at a strike price equivalent to the county price support price for wheat;

(iv) For wheat producers in North Dakota, purchase at least one December 1995 MGE put option at a strike price equivalent to the county price support price for wheat;

(v) For wheat producers in Ohio, purchase at least one December 1995 CBOT put option at a strike price equivalent to the county price support price for wheat;

(vi) Forego CCC price support loan program and loan deficiency benefits, including the Farmer Owned Reserve, with respect to the bushels enrolled at the price support put option program; and

(vii) Forego participation at the target price equivalent strike price level with respect to such bushels.

(c) After all participant signatures have been obtained, county committees will approve all eligible CCC–300 agreements by the second Friday after the end of signup. A CCC–300 agreement may be approved, with the concurrence of a State committee representative, after the deadline subject to the following conditions:

(1) The CCC–300 was erroneously not approved or was not timely approved by the county committee;

(2) The producer signature requirements were met as provided in paragraph (d) of this section, and

(3) The individual case and the reasons for late approval are documented in the minutes of the county committee.

(d) (1) Participation is on a producer basis. When purchasing put options, producers enrolled in this program may use bushels derived from:

(i) Their share of production from a farm; or

(ii) Production from multiple farms.

(2) However, multiple producers on the same farm may not combine production in order to participate.

(e) A producer must have a corn or wheat, respectively, crop acreage base in order to participate in the program at the target price strike price level for corn or wheat. However, a producer planting corn on a farm with a grain sorghum crop acreage base, who reports that such acreage is corn for purposes of participating in the acreage reduction program for grain sorghum, may participate in the Options Program at the price support strike price level for corn.

(f) With respect to each producer, the maximum quantity eligible for target price put options is limited to the quantity determined by multiplying the participant's production adjustment payment acreage times the crop payment yield. The quantity eligible for price support put options is limited to the actual production eligible to be pledged as collateral for a CCC price support loan less any amount enrolled at the target price strike price level. Additionally, the total quantity of corn enrolled in the pilot program per participant shall not exceed 10 option contracts (50,000 bushels), and the total quantity of wheat and soybeans enrolled shall not exceed 3 option contracts (15,000 bushels).

(g) In order for producers of seed corn who enroll in the Options Program to receive the same benefits of the program as other enrolled producers, such producers shall have the actual quantity considered priced increased by the ratio of the farm payment yield established for the crop for the farm and the actual yield.

(h) If a producer enrolled in the program is not in compliance with the provisions of the production adjustment program for wheat or corn, as applicable, the producer will be required to repay any premiums and incentive payments made, in addition to any interest determined in accordance with the provisions of such program agreement.

[59 FR 59317, Nov. 16, 1994, as amended at 60 FR 44258, Aug. 25, 1995]

## Subpart D—Payments and Documentation

### § 1415.20 Premium and incentive payments.

(a) Producers participating in the Options Program will be reimbursed by CCC for the cost of the put option premium, subject to the total payment limitation specified in § 1415.24.

(b) Producers who comply with all terms and conditions of the CCC–300 agreement will receive an incentive payment equal to $.05 cents per bushel (or $250 per option contract of 5000 bushels) for purchasing a target price or loan rate put option.

(c) The incentive payments will be issued:

(1) At the expiration of the options program contract for all eligible bushels;

(2) After all participation requirements have been fulfilled, and:

(i) The options position has been closed through either:

(A) Selling the put option;

(B) Exercising the put option; or

(C) Allowing the put option to expire; and

(ii) The commodity has been priced.

(d)(1) Producers enrolled in the options program shall price their enrolled grain:

(i) To a licensed, bonded grain dealer, grain merchant, or warehouse; or

(ii) for short hedges, through a registered commodity broker.

(2) Documentation must be provided that such a transaction took place.

(e) Payments due eligible producers must be made within 30 calendar days after the payment due date specified in part 1413 of this chapter. If such payments are not issued within 30 calendar days after the due date, the producer will be also issued prompt payment interest.

(f) CCC will collect the excess premium issued at the time the actual payment acreage is reported by the producer, and no incentive payment will be issued with respect to the overstated acreage if, for target price participation, the acreage enrolled in the production adjustment program which is used in determining deficiency payments is less than the intended payment acreage specified in the agreement. However, the producer will be allowed to keep the put option with respect to the additional bushels.

(g) The producer will not be allowed to increase the quantity of the commodity enrolled in the program if, for target price participation, the acreage enrolled in the production adjustment program, which is used in determining deficiency payments, is more than the intended payment acreage specified in the agreement.

(h) Producers enrolled in the program at the target price level who have received an advance deficiency payment on production enrolled in the program will have such amount deducted from the premium earned for the put options.

[59 FR 59317, Nov. 16, 1994, as amended at 60 FR 44259, Aug. 25, 1995]

### § 1415.21 Documentation.

(a) To receive reimbursement for the cost of the premium of the put option, the producer shall provide to CCC documentary evidence of the purchase.

(b) Such documentation shall include:

(1) Broker's or brokerage firm's name and address;

(2) Producer's account number;

(3) The commodity for which the put option was purchased;

(4) The date the put option was purchased;

(5) The number of 5,000 bushel put option contracts purchased; and

(6) The price that was paid for each put option contract.

(c) Copies of such documentation shall be attached to the CCC–300 agreement and retained in the county FSA office.

(d) The final date for producers to submit evidence of purchasing a put option contract shall be the later of:

(1) 2 weeks after the put option has been purchased; or

(2) 2 weeks after the producer is notified of the deadline for submitting such documentation.

(e) Late-filed evidence of purchasing a put option may be accepted under meritorious circumstances if approved by the county committee.

(f) To receive the incentive payment, eligible producers must provide documentation, such as copies of contracts or bills of sale, to the county committee at least 2 weeks after pricing the grain that shows when the grain was priced. Such documentation must include:

(1) Buyer's name and address;

(2) Broker's or brokerage firm's name and address, if applicable;

(3) Producer's name and address;

(4) The commodity for which the put option was purchased;

(5) The date the commodity was sold;

(6) The number of bushels of the commodity that were priced; and

(7) The price that was paid.

### § 1415.22 Brokerage accounts, fees and charges.

(a) Producers who elect to enroll in the Options Program shall be responsible for establishing a separate brokerage account for purchasing put options for this program. Subaccounts shall not be used by such producer.

(b) Producers enrolled in the Options Program shall be responsible for all transaction costs related to purchasing a put option contract. Such costs shall include, but are not limited to:

(1) Brokerage fees;

(2) Transaction taxes; and

(3) Other related costs.

(c) Producers shall complete form CCC–302, Authorization for Release of Information Regarding Options Marketing Contracts, which authorizes individual brokers or brokerage entities to submit copies of statements concerning the producer's options contracts to the county office. Such information shall be reviewed by the county committee before issuance of any payments.

### § 1415.23 Other production.

Production not enrolled in either the target price or price support levels of the Options Program will be eligible for deficiency payments and to be pledged as collateral for CCC price support loans or tendered to CCC for purchase in accordance with parts 1413 and 1421 of this chapter, respectively.

### § 1415.24 Payment limitations.

(a) Participants shall agree that:

(1) In the case of target price participation, the total of the premium subsidies received under the options program and the deficiency payments received under the annual acreage reduction programs will not exceed $50,000 per person; and

(2) In the case of price support participation, the total of premium subsidies received under the option program and loan deficiency payments, marketing loan gains, and ''Findley'' deficiency payments received under such programs will not exceed $75,000 per person.

(b) A ''person'' will be determined in the same manner as a ''person'' is determined for payment limitation purposes for such annual programs, as provided in part 1497 of this chapter.

### § 1415.25 Disaster benefits on enrolled bushels.

(a) Disaster and deficiency payments cannot be earned on the same quantity of bushels, and the quantity of bushels enrolled in the Options Program cannot exceed the eligible deficiency quantity. If such deficiency quantity is reduced by the disaster quantity, the number of bushels eligible for enrollment in the Options Program may be reduced according to paragraph (b) of this section.

(b) If an enrolled producer elects to apply for disaster benefits and the enrolled options program quantity exceeds the eligible deficiency quantity after such quantity is adjusted for disaster, such producer shall refund, before receiving disaster benefits, any premium and incentive payments on the quantity of bushels that exceeds the remaining deficiency quantity.

(c) The total of disaster, deficiency, and Options Program bushels shall not exceed the result of multiplying the permitted acreage for the crop times the yield. Options Program bushels that remain eligible for premium and incentive payments shall be calculated as the smaller of:

(1) The result of multiplying the permitted acreage of the commodity, times the program payment yield established for such commodity, minus the disaster bushels; or

(2) The bushels of the commodity that are enrolled in the options program.

### § 1415.26 Successors in interest.

The successor in interest provisions of § 1413.51 of this chapter are applicable to this part.

### § 1415.27 Reconstitution of farms.

The reconstitution regulations set forth in part 719 of this title are applicable to this part.

### § 1415.28 Misrepresentation and scheme or device.

The misrepresentation and scheme and device regulations set forth in § 1413.52 of this title are applicable to this part.

### § 1415.29 Offsets and assignments.

The offset and assignment regulations set forth in parts 1403 and 1404 of this title are applicable to this part.

## PART 1416—VOLUNTARY PRODUCTION LIMITATION PROGRAM

### Subpart A—General Provisions

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1416.400 Program payments and price support loans and loan deficiency payments.
1416.401 Determining producer's share of crop.

AUTHORITY: 7 U.S.C. 1444f, 1445b-3a, 15 U.S.C. 714b and 714c.

SOURCE: 59 FR 59320, Nov. 16, 1994, unless otherwise noted.

## Subpart A—General Provisions

### § 1416.1 Applicability.

The regulations in this part are applicable to the Voluntary Production Limitation Program (VPLP), for the 1994 and 1995 crops of wheat and feed grains and set forth the terms and conditions under which producers of these commodities may enter into agreements with the Commodity Credit Corporation (CCC) to qualify for program benefits under the VPLP.

### § 1416.2 Administration.

(a) The provisions of § 1413.4 of this chapter shall be applicable to this part, except as otherwise noted in this section.

(b) The VPLP will be administered under the general supervision of the Administrator, Farm Service Agency (FSA) and shall be carried out in the field by State and county Farm Service Agency committees (herein called ''State and county committees'').

(c) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(d) 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, any action taken by such county committee which is not in accordance with the regulations of this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulation of this part.

(e) No provision or delegation herein to a State or county committee shall preclude the Administrator, FSA, or designee, from determining any question arising under the VPLP or from reversing or modifying any determination made by a State or county committee.

(f) The Deputy Administrator 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 program.

(g) A representative of CCC may execute form CCC–135, Intention to Participate in the 1994 Voluntary Production Limitation Program, for wheat, barley, oats, corn, and grain sorghum only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any form CCC–135 which 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, shall be null and void and shall not be considered to be an agreement between CCC and the operator and any other producer on the farm.

### §1416.3 Performance based upon advice or action of county or State committee.

The provisions of part 791 of this title with respect to performance based upon action or advice of any authorized representative or the Secretary shall be applicable to this part.

### §1416.4 Appeals.

(a) A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with §1413.109 of this chapter may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at part 780 of this title.

(b) With respect to farm program payment yields, determinations made before December 23, 1985, are not appealable.

### §1416.5 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 35, and assigned OMB Nos. 0560–0004 and 0560–0092.

### §1416.6 Controlled substance violations.

In accordance with the regulations in part 796 of this title, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance such as marijuana.

### §1416.7 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.

Whenever a producer, or a person affiliated with such producer, is determined to be ineligible in accordance with the provisions of part 12 of this title, such producer shall be ineligible for any payments under this part and shall refund any payments already received.

### §1416.8 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine, and words used in the present tense include the past and future as well as the present. The following terms shall give the following meanings. All regulations governing the reconstitution of farms in part 719 of this title and the regulations applicable to the production adjustment programs for wheat and feed grains set forth in part 1413 of this chapter shall be applicable to the VPLP.

*Agreement* means form CCC–135, Intention to Participate in the 1994 Voluntary Production Limitation Program.

*Current year* means current year as defined in accordance with 7 CFR 1413.9.

*Producer* means producer as defined in accordance with 7 CFR 1413.9.

*Maximum payment acres* means maximum payment acres as defined in accordance with 7 CFR 1413.9.

*Production limitation quantity (PLQ)* means the amount of production from an enrolled program crop of wheat or

feed grain that is eligible to be marketed in 1 year by a producer enrolled in the VPLP.

*Production limitation quantity yield* means for a wheat or feed grain program crop either:

(1) The farm payment historical weighted yield (HWY), or,

(2) The proven yield.

## Subpart B—Program Provisions

### § 1416.100 Eligible VPLP Counties.

(a) The VPLP shall be effective for the 1995 crops of wheat and feed grains in:

(1) Fremont, Harrison, Mills, Monona, and West Pottawattamie Counties in Iowa;

(2) Adams, Furnas, Harlan, Kearney, and Phelps Counties in Nebraska; and

(3) Bon Homme, Charles Mix, Douglas, Turner, and Yankton Counties in South Dakota.

(b) Farms enrolled in the VPLP must be administratively located in one of the selected counties.

[59 FR 59320, Nov. 16, 1994, as amended at 60 FR 44259, Aug. 25, 1995]

### § 1416.101 Basic program provisions.

(a)(1) The enrollment period for this program will coincide with the period established for the Acreage Reduction Program (ARP) signup, which will be January 30 through May 31, 1995.

(2) In order to participate in VPLP, a producer must purchase at least the minimum catastrophic level of crop insurance, according to part 400 of this chapter, for each crop of economic significance grown on each farm in the county in which the producer has an interest, if such insurance is available in the county for the crop.

(b) A farm enrolled in the VPLP must have an established crop acreage base (CAB) for the enrolled crop in accordance with part 1413 of this chapter.

(c) Producers on a farm shall be considered to have met the requirements of the current year ARP for barley, corn, grain sorghum, oats, and wheat, respectively, if requirements for the VPLP for such crop, as set forth in this section, are met.

(d) Participating producers shall be determined eligible for program benefits in accordance with 7 CFR parts 1497 and 1498 of this chapter, respectively.

(e) In order to participate, producers on a farm must enroll 1 or more wheat or feed grain crops into the program on a farm having a CAB for such a crop.

(f) Eligible crops to be enrolled in the VPLP are as follows:

(1) Wheat;

(2) Corn;

(3) Grain sorghum;

(4) Barley; and

(5) Oats.

(g) Producers with farming interests on multiple farms are not required to enroll all farms into the VPLP.

(h) Farm owners must treat operators, tenants, and sharecroppers fairly, in accordance with § 1413.107 of this chapter.

(i) Producers must not be in violation of controlled substance provisions in accordance with part 796 of this title.

(j) Except for Bureau of Indian Affairs, Federal agencies are ineligible for VPLP payments.

(k) Acreage conservation reserve, in accordance with § 1413.61 of this chapter, is not required for crops enrolled in the VPLP.

(l) The provisions of § 1413.41 of this chapter do not apply to crops enrolled in VPLP.

(m) The provisions of § 1413.43 of this chapter do not apply to crops enrolled in VPLP.

(n) The sum of the planted acreage for all enrolled wheat and/or feed grain program crops shall not exceed the sum of the enrolled wheat or feed program CAB's on the farm.

(o) Producers who do not comply with the terms and conditions of the VPLP for a crop shall be required to refund all or a part, as determined appropriate by CCC, of the current year payments received by such producers for such crop.

[59 FR 59320, Nov. 16, 1994, as amended at 60 FR 44259, Aug. 25, 1995]

### § 1416.102 Production limitation quantity (PLQ) and carryover quantities.

(a) Producers participating in the VPLP must agree not to market, barter, donate, or use on the farm, including use as livestock feed, a quantity greater than the sum of the PLQ for enrolled crops, calculated in paragraph

(d) of this section and eligible carryover determined according to paragraph (b) of this section.

(b) Carryover production will be defined as eligible and ineligible carryover as follows: If the crop was:

(1) Enrolled in the VPLP the previous year and the current year, any carryover production from any previous crop is ineligible carryover, and if marketed, bartered, donated, or used during the current year shall be counted against the PLQ for the current year. However, so that no benefit will occur from the carryover, the producer may destroy the carryover under supervision of an employee of FSA; or

(2) Not enrolled in the VPLP in the previous year but is enrolled in the current year, the carryover production from a previous crop year is eligible carryover and may be marketed, bartered, donated, or used during the current year without being counted against the PLQ for the current crop year; or

(3) Enrolled in VPLP in the previous year and is enrolled in ARP in the current year, the producer may devote an amount of acreage to conservation use acreage equal to the excess production divided by the PLQ yield for the crop and have the excess production considered eligible carryover.

(c) Production harvested in excess of the PLQ may be stored up to but not more than 5 years. Any excess commodity stored longer than 5 years is subject to forfeiture to CCC.

(d) The PLQ for a crop for a marketing year shall equal the product obtained by multiplying the acreage that would be permitted to be planted to such crop under the regular ARP conducted in accordance with part 1413 of this chapter by the PLQ yield.

(e)(1) The PLQ yield shall be calculated as the higher of:

(i) The farm program payment historic weighted yield for the crop determined in accordance with part 1413 of this chapter; or

(ii) The average of the actual yields, as determined in accordance with §1416.104 of this part, for the crop for the farm for each of the 1989 through 1993 crop years, excluding the crop years with the highest and lowest yields.

(2) Any crop year in which the commodity was not planted shall be excluded.

(f) Farms which have either, corn or grain sorghum CAB's, or both, and participate in the VPLP, shall have the PLQ calculated as corn equivalents by multiplying the combined permitted acreage of corn and grain sorghum times the corn PLQ yield.

(g)(1) If grain sorghum is harvested on the farm, grain sorghum production credited against the PLQ shall be determined by:

(i) Dividing the corn yield by the grain sorghum yield; and

(ii) Multiplying the factor determined in (g)(1)(i) of this section times the grain sorghum production (bushels) marketed, bartered, donated, or used on the farm.

(2) The result is bushels of grain sorghum expressed in corn equivalents. Subtract this result from the PLQ for the combined permitted corn-grain sorghum PLQ to determine the quantity of corn eligible to be marketed.

### §1416.103 Production evidence for actual yields.

The following provisions apply if producers elect to submit actual production for establishing actual yields for determining the PLQ in accordance with §1416.102:

(a) Production evidence for the enrolled program crop(s) must be submitted to County FSA Offices on form ASCS–658, Record of Production and Yield. Additional evidence will be required if a representative of the county FSA office determines there is insufficient evidence to support the representation of production or acreage of the crop on the farm as certified to by the producer.

(b) Producers with an interest in enrolled crops on more than one farm shall certify the production from any farm not enrolled in VPLP and may be subject to a spotcheck for such certifications.

(c) Evidence for commercially stored production or production disposed of off the farm must show the:

(1) Producer's name;

(2) Commodity;

(3) Buyer's or storer's name; and

(4) Date of transaction.

(d) Acceptable documents substantiating amounts of commercially stored or disposed of production include:

(1) Commercial or warehouse receipts;

(2) Sales or elevator receipts;

(3) Warehouse ledger sheets or copies;

(4) Warehouse load summaries or copies;

(5) Settlement sheets;

(6) CCC-warehouse stored loan documents;

(7) Farm stored loan documents, if quantity has been determined by measurement;

(8) Weight slips or scale tickets from harvested or appraised acreage;

(9) Approved Federal Crop Insurance Corporation or multiperil crop insurance loss adjustment settlement; and

(10) Scale tickets or weight slips for wheat and feed grains that are supported by other evidence showing disposition, such as sales documents.

(e) (1) Documents showing the amount of production shall be reviewed to determine moisture content and dockage associated with the production. If the document does not show that the production has been reduced to standard moisture levels and shows:

(i) Specific moisture that is greater than standard;

(ii) Dockage; or

(iii) Both excess moisture and dockage, the net amount shall be adjusted on standard moisture levels and applicable dockage standards as determined by CCC.

(2) [Reserved]

(f) Standard test weights shall be used to convert net weight to bushels, in accordance with part 1421 of this title.

(g)(1) Farm-stored production will be measured at producer's request and expense. Scale tickets or weight slips may be accepted for production instead of the measured quantity, when the scale tickets or weight slips include all of the following:

(i) Farm identification number;

(ii) Commodity;

(iii) Date weighed; and

(iv) Weigher's signature or initials, and company name if available.

(2) The county committee shall determine that the measurements indicating the weighed quantity in the bin is reasonable compared to the measured quantity.

(h) Determined quantities may be changed for future years based on delivery amounts if a delivery amount indicates the quantity in the bin.

(i) If delivered amounts are normally smaller than measured quantities, other evidence, such as sales receipts, may be required to adjust quantities.

(j) Commingled production shall be apportioned between farms by measuring total harvested production and apportioning harvested production between farms based on the ratio of each farm's payment yield.

(k) When a farm has multiple producers and the producers' share of the production and total bushels received are known, the farm yield may be computed from this data.

(l) Production evidence for enrolled crops may be accepted no later than the 15 calendar days after the final signup date for VPLP.

[59 FR 59320, Nov. 16, 1994, as amended at 60 FR 44259, Aug. 25, 1995]

### § 1416.104 Commingling grain.

(a) The producer will be allowed to store or commingle production for any and all crop years from acreage enrolled in the VPLP with any crop year production from acreage in compliance with the ARP.

(b) However, VPLP production must be measured by a representative of the county FSA office before it is commingled with any other production.

### § 1416.105 Required production reports.

(a) Producers enrolled in the VPLP must file reports for each enrolled crop which include:

(1) The quantity of each enrolled crop on hand at the beginning of the current marketing year (June 1, for wheat, barley, and oats; September 1, for corn and grain sorghum);

(2) The quantity of the enrolled crop harvested in the current year; and

(3) The quantity of the enrolled crop's production on hand at the end of the current marketing year (May 31,

for wheat, barley, and oats; August 31, for corn and grain sorghum).

(b) Producers shall certify the required quantities on form CCC–136, Production Certification for the VPLP.

(c) Certification of the quantity on hand at the beginning of the marketing year for the current crop production year shall occur no later than June 1 for wheat, barley, and oats and September 1 for corn and grain sorghum.

(d) A representative of the county FSA office will conduct spot checks of all producer certifications.

(e) The operator shall certify current year production of wheat and small grains harvested for enrolled program crops no later than the following dates:

(1) Iowa—July 30;

(2) Nebraska—July 15; and

(3) South Dakota—August 1.

(f) The operator shall certify current year production of corn and grain sorghum harvested for enrolled corn and grain sorghum crops no later than December 1.

### §1416.106 Determining compliance with PLQ.

(a) The quantity of an enrolled crop marketed, bartered, donated, or used on the farm during the marketing year will be calculated, based on the quantities reported in accordance with §1416.105, by adding the amount of the enrolled crop reported on hand at the beginning of the marketing year and the production amount of the enrolled crop harvested and subtracting the quantity of the enrolled crop on hand at the end of the marketing year.

(b) The production amount disposed of:

(1) Is in compliance with program provisions if the result is less than or equal to the sum of the PLQ for the crop and eligible carryover as determined in §1416.102;

(2) Is not in compliance if the result of paragraph (a) of this section is more than the sum of the PLQ and eligible carryover as determined in §1416.102. In this case, excess marketings have occurred and the producer will be subject to a penalty.

(c) When the disposed bushels exceed the allowable quantities determined according to paragraph (a) of this section by:

(1) 5 percent or less, the penalty is the larger of the price support rate established for the county for the commodity or the current market price, as determined by CCC, times the excess bushels;

(2) 6 to 10 percent, the penalty is the larger of the price support rate established for the county for the commodity or 1.2 times the current market price, as determined by CCC, at the time the violation is discovered times the excess bushels;

(3) Over 10 percent, the penalty is the larger of the target price or 1.5 times the current market price, as determined by CCC, at the time the violation is discovered times the excess bushels.

### §1416.107 Penalties for inaccurate inventory and crop production reporting errors.

(a) A penalty shall be assessed for each crop enrolled in this program for discrepancies in reporting the bushel quantity in accordance with §1416.105.

(b) For any discrepancies in quantities listed above, the penalty per bushel shall be the higher of:

(1) The target price; or

(2) 1.5 times the market price, as of the date the quantities are required to be reported.

### §1416.108 Incorrect, false, or unacceptable evidence and penalties.

When production evidence submitted for providing yields in accordance with §1416.103 is found to be unacceptable, incorrect, or false, a proven yield will not be established.

### §1416.109 Planted and considered planted acreages.

Regardless of planted acreages, planted and considered planted (P&CP) acreages for crops enrolled in the VPLP shall be equal the CAB.

### §1416.110 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination made in accordance with this part shall:

(1) Not be entitled to payments under the crop program with respect to which the representation was made,

(2) Refund to CCC all payments received by such producer with respect to such farm and such crop program, and

(3) Be liable for liquidated damages in accordance with the terms of the CCC–477.

(b) With respect to programs conducted in accordance with this part, a producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly:

(1) Adopted any scheme or device which 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 received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the CCC–477. Such producer also shall be ineligible to receive program payments for the year in which the scheme or device was adopted. If such action also is determined by CCC to be a scheme or device, a fraudulent representation or a misrepresentation of fact affecting a determination made in accordance with part 1497 of this title, the producer shall also be ineligible for program payments.

(c) A producer who is determined to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the program,

(2) Made any fraudulent misrepresentation, or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to such farm. Such producer shall be ineligible to receive program payments for the year in which the scheme or device was adopted, and also in the succeeding year.

[59 FR 59320, Nov. 16, 1994; 60 FR 57823, Nov. 22, 1995]

## Subpart C—Agreement Procedure for VPLP

### § 1416.300 Obtaining owner and producer signatures.

(a) The agreement to participate in the 1994 VPLP, form CCC–135, shall be signed by:

(1) The operator; and

(2) All producers sharing in the enrolled crop or the proceeds of the enrolled crop.

(b) Owners not sharing in the enrolled crop shall not be required to sign the agreement. However, either of the following must be provided for the current year to the County Office:

(1) A written lease, rental arrangement, or other document signed by the owner, showing that the operator has operational control over the farm, or

(2) A written statement by the operator certifying that the operator understands that any incorrect or misleading statement shall require a forfeiture of all program benefits for the farm for the years included in the certification, and certifying either of the following:

(i) The land is rented for the current pilot VPLP year and the landowner receives no benefit from the crop; or

(ii) Landowner's cropland is enrolled in conservation reserve program and receives no benefit from the crop.

(c) County offices shall not approve form CCC–135 when any producer refuses to sign form CCC–135.

(d) The County committee may accept a late-filed CCC–135 after the end of the signup period if the county committee determines that either:

(1) Failure to timely file was beyond the control of the producer, or;

(2) All of the following apply:

(i) The farm operator demonstrated a good faith effort to timely file the required information;

(ii) Failure to timely apply did not result from gross negligence on the part of the farm operator or any party to CCC–135; and

(iii) Acceptance of CCC–135 would not create a situation that defeats the purpose of VPLP.

**§1416.301 Determining share leases or cash leases.**

Share leases and cash leases shall be determined in accordance with §1413.107 of this chapter.

**§1416.302 Changes to form CCC–135.**

(a) The operator may cancel or revise form CCC–135 before the end of the VPLP signup period. Any advance payments that were issued and cannot be earned must be refunded with interest unless CCC–184, CCC check, is returned unnegotiated.

(b) The request by the farm operator to revise or cancel form CCC–135 shall be in writing or attached to form CCC–135.

(c) A new form CCC–135 shall be used as follows:

(1) When form CCC–135 has been approved during the signup period because advance payments were requested and then the operator revises form CCC–135;

(2) When an operator cancels a crop or reinstates a canceled crop; and

(3) With all required signatures for the crops to be enrolled or canceled.

(d) A canceled form CCC–135 may be reinstated before the end of the signup period.

(e) When form CCC–135 is canceled, all crops will be considered nonparticipating in the VPLP for all purposes, including planted and considered planted acreages.

**§1416.303 Revisions to form CCC–135 because of succession in interest.**

(a) The provisions at §1413.51 relating to successors in interest are applicable to the VPLP. In addition:

(1) All producers whose shares have changed from the original CCC–135 must sign a revised CCC–135 by the earliest of the following:

(i) Date the crop is actually harvested;

(ii) December 31 of the current year; or

(iii) 15 calendar days after the county committee was notified of the succession.

(2) The successor shall be informed, before the successor's request to revise the CCC–135 is approved that:

(i) Successor is fully responsible for the predecessor's payments;

(ii) Successor shall refund any outstanding advance that is not earned on the farm; and

(iii) The successor's payments will be reduced by the amount of any outstanding advance.

(b)(1) When the predecessor does not agree to a revised CCC–135 the county committee shall determine if the predecessor has lost the authority to carry out the producer's responsibilities under CCC–135. In such cases the county committee shall:

(i) With the concurrence of the FSA District Director, determine the producers, including the predecessor, who should receive payments based on a fair division of the payment; and

(ii) Offer the producers the opportunity to enter into a revised CCC–135.

(2) If the successor does not agree to enter into a revised CCC–135, the original CCC–135 will remain in effect and the original parties to CCC–135 remain liable if noncompliance occurs.

(c) If a person who signed a CCC–135 is later determined to be dead, missing, or declared incompetent, payments will be made in accordance with part 1413 of this title.

**§1416.304 Effect of reconstitutions on approved form CCC–135.**

(a) If a farm reconstitution is effective for the current year and is approved after form CCC–135 is filed and approved, producers may file a new form CCC–135 for a resulting farm by the later of the following:

(1) 15 calendar days after the date of form ASCS–476, Notice of Acreage Bases, Yields, Allotments, and/or Quotas, was determined for the resulting farm; or

(2) The end of the signup period.

(b) If the producer on the parent farm has not refunded the advance payment, then the producers on the resulting farm cannot receive an advance payment on the same acreage, and the final payments to the producers on the resulting farm shall be reduced by the advances paid for the parent farm.

## Subpart D—Payments

### § 1416.400 Program payments and price support loans and loan deficiency payments.

(a) The deficiency payment provisions of part 1413 of this chapter are applicable to this part, except as otherwise provided in this section.

(b) Producers of enrolled CAB's shall be eligible to earn deficiency payments on the number of acres planted to such CAB's or the maximum payment acres for the CAB's including CAB's planted to an enrolled wheat or feed grain crop different from the CAB assigned to the crop.

(c) The deficiency payment yield shall be the historic weighted yield for the crop. The actual proven yield shall be used only to calculate the PLQ for the crop.

(d) Production from an enrolled crop is eligible for current program year price support benefits including the farmer owned reserve if the quantity is eligible for the farmer owned reserve.

[59 FR 59320, Nov. 16, 1994, as amended at 60 FR 44259, Aug. 25, 1995]

### § 1416.401 Determining producer shares of crop.

(a) The producer's share of the crop shall be determined in accordance with the regulations in § 1413.106.

# 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, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

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AUTHORITY: 7 U.S.C. 7231–7235, 7237; and 15 U.S.C. 714b and 714c.

## Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, 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.

### §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;

(3) The 1996 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton; and

(4) 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.

### § 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 1422—PEANUTS

## Subpart—Standards for Approval of Cold Storage Warehouses for Peanuts

Sec.
1422.1 General statement and administration.
1422.2 Standards for warehousemen and warehouses.
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1422.8 Other conditions for disapproval.
1422.9 Approval of warehouse and duration of approval.
1422.10 Waiver of requirements.

AUTHORITY: Sec. 4, 62 Stat. 1070, as amended; (15 U.S.C. 714b).

## Subpart—Standards for Approval of Cold Storage Warehouses for Peanuts

SOURCE: 32 FR 20767, Dec. 23, 1967, unless otherwise noted.

### §1422.1 General statement and administration.

(a) This subpart prescribes the procedure to be followed by warehousemen who desire the Commodity Credit Corporation (hereinafter referred to as ''CCC'') to approve their cold storage warehouses for the storage and handling, under contract with CCC, of shelled peanuts which are owned by CCC or held by CCC as security for price support loans and which require refrigerated storage. It also prescribes the requirements of CCC for approval of such warehouses. Warehousemen desiring to secure approval of their warehouses under this subpart may obtain information and the necessary application and other forms from (1) the Producer Associations Division, Farm Service Agency, U.S. Department of Agriculture, Washington, DC 20250, or (2) the following associations, each of which, under contract with CCC, performs certain functions in connection with CCC's inventory of peanuts: GFA Peanut Association, Camilla, Ga. (Southeastern Area); Southwestern Peanut Growers Association, Gorman, Tex. (Southwestern Area); and Peanut Growers Cooperative Marketing Association, Franklin, Va. (Virginia-Carolina Area). Warehousemen shall submit all forms, statements, and other information required by this subpart to be furnished to CCC to the association in the area where the warehouse is located.

(b) Although a warehouse must be approved by CCC before it will be used for the storage and handling of peanuts, such approval, or the execution of a storage contract with the warehouseman, does not constitute a commitment that the warehouse will be used by CCC and no official or employee of CCC or any association named in this section is authorized to make any such commitment.

### §1422.2 Standards for warehousemen and warehouses.

Initial approval of a warehouse by CCC, and its continued approval of an approved warehouse, are conditioned upon conformance with the following standards.

(a) The warehouseman shall, except as provided in §1422.6:

(1) Be an individual, partnership, or an existing legal entity engaging in the business of storing for hire and, if organized in the corporate form, have charter authority to engage in such business.

(2) Have sufficient experience in, and knowledge of, the warehousing business to enable him to give adequate protection and services with respect to the peanuts to be stored.

(3) Have satisfactorily complied with all previous contracts with CCC and instructions issued thereunder: *Provided, however,* That this provision shall apply only in circumstances excepted from CCC regulations governing suspension and debarment (31 FR 4950), and any amendments thereto, unless suspension or debarment action has been taken as provided in such regulations.

(4) Have a net worth of at least $10,000 to assure his financial responsibility.

(5) Have sufficient funds available to meet ordinary operating expenses which, if not paid, would cause cessation of operations.

(6) Furnish CCC a completed Application for Approval of a Warehouse (Form CCC–1029).

(7) Furnish CCC a completed Schedule of Rates (Form CCC–1030–2) on which he certifies that the rates quoted in the schedule are not in excess of rates charged other customers.

(8) Furnish CCC financial statements as may be required under § 1422.3.

(9) Furnish CCC surety bonds as may be required under § 1422.4.

(10) Maintain complete and accurate inventory and operating records.

(11) If State or local law requires that warehousemen be licensed to engage in the business of storing goods for hire, furnish CCC evidence that he is so licensed by the appropriate licensing authority.

(b) Supervisory employees of the warehouse shall meet the requirements of (1) paragraph (a)(2) of this section, and (2) paragraph (a)(3) of this section.

(c) Owners, directors, responsible officers, and employees of the warehouse shall meet requirements of paragraph (a)(3) of this section.

(d) The warehouse shall meet the following requirements:

(1) Be of sound construction with equipment in good repair, and so constructed as to adequately protect the peanuts.

(2) Be under the control at all times of the warehouseman who executes the storage contract. Peanuts are not to be stored in an area operated as a ''field warehouse'' unless the warehouseman is the ''field warehouseman.''

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

(4) Have equipment to adequately handle, preserve, and protect the peanuts, including dual refrigeration units and adequate fire fighting equipment.

(5) Have space for the storage separate from peanuts of any products which CCC determines adversely affect the storage life, quality, or flavor of peanuts or are subject to a significantly greater fire risk than peanuts.

(6) Have adequate load-out capacity, as determined by CCC.

[32 FR 20767, Dec. 23, 1967; 33 FR 223, Jan. 6, 1968]

### § 1422.3 Financial statement.

(a) Except as provided in § 1422.6, the warehouseman shall furnish either (1) a fully completed financial statement on Form TW–51, Financial Statement, or (2) a Form TW–51 (i) completed as to page 1 and the General Information and Certification section of page 4, and (ii) accompanied by a financial statement prepared and certified or otherwise authenticated by the public accountant to the extent consistent with the accountant's verification of the facts contained in the statement. Such certification or authentication may be separate from the financial statement. The warehouseman shall execute the Certification on Form TW–51 in every case.

(b) A financial statement furnished by a warehouseman shall show the financial condition of the warehouseman as of the date not more than 60 days prior to (1) the date of the application, if the statement accompanies the application, or (2) the date of the statement, if the statement is furnished under § 1422.9.

(c) The financial statement and other financial data furnished by a warehouseman will not be disclosed by CCC except as required by law or authorized by CCC regulations relating to official records.

### § 1422.4 Bonding requirements.

(a) Except as provided in § 1422.6 and paragraph (b) of this section, the warehouseman shall furnish to CCC a performance bond, executed on a form furnished or approved by CCC by surety companies which have been approved by the U.S. Treasury Department (Circular No. 570) and which maintain an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(1) The amount of such performance bond shall be not less than 5 percent of the net book value of the estimated quantity of peanuts to be stored, but in no event less than $5,000 or, except as provided in paragraph (c) of this section more than $100,000.

(2) The warehouseman may apply against the total amount of bond coverage required the amount of a surety bond which is furnished under State law or under operational rules of nongovernmental supervisory bodies and which is determined by the Director, Producer Associations Division, to protect adequately the interest of CCC.

(b) Cash, negotiable securities, and legal liability insurance policies may be accepted in lieu of the equivalent amount of required bond coverage under the following conditions:

(1) CCC will determine the acceptability of and valuation to be placed on any cash or negotiable securities offered in substitution for bond coverage. When the period for which the bond was required has ended and it is determined that all liability under the storage agreement with CCC has terminated, the cash or securities will be returned to the warehouseman.

(2) Legal liability insurance policies offered in substitution for bond coverage must show CCC as the insured and be approved by the Director, Producer Associations Division.

(c) Notwithstanding any other provisions of this subpart, CCC may require additional bond coverage if in the light of all the circumstances relating to the operation of the warehouse, CCC determines that the amount of bond coverage required under paragraph (a)(1) of this section is not sufficient to protect adequately the interests of CCC.

### §1422.5 Inspection of warehouses.

Except in the case of a warehouse licensed under the U.S. Warehouse Act for the storage and handling of peanuts, prior to the time CCC approves a warehouse for the storage and handling of peanuts CCC will have the warehouse examined and will take such other action as it considers necessary to determine whether the requirements of §1422.2 have been met. The warehouse examiner will make recommendations regarding the approval or disapproval of the warehouse.

### §1422.6 Exceptions.

Notwithstanding any other provision of this subpart:

(a) Warehousemen licensed under the U.S. Warehouse Act for the storage and handling of peanuts will not be required to furnish performance bonds or financial statements in order to be approved by CCC, and their warehouses will not be subject to regular examinations other than those required by that Act, but will be subject to such special examinations as CCC may determine are necessary. All other requirements of this subpart shall, unless otherwise provided, be met by such warehousemen seeking approval under this subpart.

(b) CCC will accept a Certificate of Competency issued by the Small Business Administration with respect to a warehouseman as establishing conformance by the warehouseman with the standards prescribed in §1422.2(a)(1), (2), (4), and (5); (b)(1); and (d)(1), (2), (3), and (4).

(c) CCC may approve a warehouseman who meets the standard set forth in paragraph (a)(4) of §1422.2 but who fails, or whose warehouse fails to meet one or more of the other standards of that section, if (1) CCC determines that the storage and handling conditions within the warehouse provide satisfactory protection for peanuts, (2) CCC determines that the services of the warehouseman are required, and (3) the warehouseman furnishes additional bond coverage (or acceptable substitute security) which is in an amount equal to at least twice the amount of the bond requirement under §1422.4(a)(1) and which meets the other requirements of §1422.4.

### §1422.7 Basis for approval or disapproval.

A review and an analysis will be made of the information disclosed by the warehouseman's application, warehouse examiner's report and recommendation, financial statement, credit reports, and other pertinent information available from other sources. If, on the basis of this review and analysis, it is determined that the warehouseman and the warehouse conform with the standards and other requirements set out in this subpart, the warehouse will be approved. If it is determined that the warehouseman fails to meet the standard set forth in §§1422.2(a)(4) and 1422.8, the warehouse will not be approved. If it is determined

that one or more of the other standards of § 1422.2 are not met, the applicant may be approved as provided in § 1422.6(c).

### § 1422.8 Other conditions for disapproval.

Applications shall not be approved (or existing approval continued in effect) if:

(a) The warehouseman (if license is required) is in violation of any provisions of the regulations of the licensing authority, or if any condition which has resulted or may result in the refusal, suspension, or revocation of the applicable warehouse license has not been corrected. Correction of any such condition shall not result in automatic approval of the warehouse and CCC may require the submission of a new application, such additional information as it deems pertinent, and a new inspection of the warehouse to determine whether it meets the requirements of this subpart.

(b) The warehouseman operating the warehouse for which approval is being sought, or any of the directors, responsible officers and employees thereof are suspended or debarred from contracting pursuant to regulations of CCC.

### § 1422.9 Approval of warehouse and duration of approval.

(a) After a warehouse has been approved and the applicable storage contract has been signed by CCC, a copy of such contract will be forwarded to the warehouseman by CCC. The warehouse will then be eligible to store and handle CCC-owned and loan peanuts.

(b) The financial condition of, and the amount of bond or substitute security furnished by, approved warehousemen will be reviewed from time to time to determine that the requirements of CCC are being met and the warehouseman shall furnish any additional bond coverage or substitute security which may be determined by CCC to be required under the provisions of this subpart. The warehouse will be reexamined from time to time to determine its continued compliance with the standards and requirements of this subpart. If at any time it is determined that a warehouseman or the warehouse does not conform with the standards and other requirements set out in this subpart, CCC shall take such appropriate action as may be necessary to protect the interests of CCC.

(c) Approval of the warehouse will remain in effect until the warehouse is removed from the list of approved warehouses, the storage contract is terminated, or the warehouseman is suspended or debarred from contracting with CCC under applicable regulations.

### § 1422.10 Waiver of requirements.

If warehousing services required in fulfilling responsibilities under CCC's programs cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available, CCC may exempt the applicant from one or more of the provisions of this subpart and may establish other requirements in lieu thereof as determined necessary to safeguard the interests of CCC. Such action may be taken only by the Executive Vice President, Commodity Credit Corporation.

# 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.

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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 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.

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1425.23 Reports.
1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.
1425.25 Appeals.

AUTHORITY: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b, 714c, and 714j.

SOURCE: 61 FR 37595, July 18, 1996, unless otherwise noted.

### §1425.1 Applicability.

This part sets forth the terms and conditions that a Cooperative Marketing Association (CMA) must meet to obtain from CCC marketing assistance loans (loans) and loan deficiency payments on behalf of its members for the 1996 and subsequent crops of a commodity. A CMA meeting such terms and conditions may obtain loans and loan deficiency payments with respect to any crop of an eligible commodity for which a loan and loan deficiency payment program is in effect.

### §1425.2 Administration.

On behalf of CCC, the FSA will administer the provisions of this part under the general direction and supervision of the Deputy Administrator. In the field, the provisions of this part will be administered by the State and county FSA committees.

### §1425.3 Definitions.

The following 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 1421 and 1427 of this chapter shall also be applicable except where those definitions conflict with the definitions in this section.

*Active member* means a member who has utilized the services offered by a CMA 1 of the 3 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* means a CMA that has been approved by CCC to participate in loan and loan deficiency payment programs authorized with respect to one or more authorized commodities.

*Authorized commodity* means those commodities for which an approved CMA may apply for loans, including barley, canola, corn, cotton, flaxseed, mustard seed, oats, rapeseed, rice, safflower, seed cotton, sorghum, soybeans, sunflower seed, and wheat.

*Eligible commodity* means a commodity that meets the eligibility requirements applicable to such commodity set forth in Chapter XIV of this title that is delivered to, or that is acquired by, a CMA.

*Member* means a person who has fully paid for the membership stock or earned equity credits; was accepted by the CMA; and is entitled to all membership rights including voting and holding office except where the law of the State in which the CMA is incorporated provides for stock subscribers as members but does not allow them to hold office.

### §1425.4 Approval.

(a) For a CMA to participate in a loan program with respect to the 1996 through 2002 crops of authorized commodities, a CMA must submit an application for approval with respect to such authorized commodities to CCC. An application must include:

(1) A completed Form CCC–846;

(2) The latest financial audit of the CMA including any accompanying notes, schedules, or exhibits, certified by a certified public accountant from the books of original entry as fairly representing the financial condition of the CMA;

(3) A copy of the articles of incorporation or articles of association, bylaws, all marketing agreements for eligible commodities, and any other document that is requested by CCC with respect to the CMA's methods of conducting business that an official of the CMA has certified as being current;

(4) A conflict of interest statement (Form CCC–846–2) from each director, officer, and principal employee;

(5) Resolutions made by the CMA board of directors that provide that the CMA will abide by provisions of this part and the nondiscrimination provisions thereof;

(6) A statement of any CMA transactions that have occurred either in the year before the initial application for approval is submitted, or are contemplated by the CMA as provided in § 1425.12;

(7) A detailed description of the method by which proceeds from a pool of eligible commodities for which loans are obtained will be distributed as provided for in § 1425.18; and

(8) Other information requested by CCC concerning the organizational, operational, financial or any other aspect of the CMA determined by CCC to be necessary to act upon the application for approval.

(b) An approved CMA must submit, on an annual basis, the following information to CCC:

(1) A completed Form CCC–846–1;

(2) The CMA's latest complete financial audit;

(3) The numbers of active and inactive members;

(4) A statement showing the allocated equity in the CMA owned by active members, inactive members, and others, and the un-allocated equity in the CMA;

(5) The names of any members who own in excess of 10 percent of the equity of the CMA and the amount owned by each;

(6) The quantity of each eligible commodity delivered to the CMA for marketing and the portion of such commodities received from active members during the prior year;

(7) The quantity of each eligible commodity tendered by the CMA to CCC as security for a loan and the quantity of such commodities redeemed during the prior year;

(8) The quantity of each commodity tendered to CCC for loan during the prior year; and

(9) A statement of any CMA transactions that either have occurred in the CMA's prior fiscal year of operations or are contemplated to occur in the CMA's current fiscal year as provided for in § 1425.12.

(c) An approved CMA shall promptly furnish to CCC:

(1) Any changes in the articles of incorporation, bylaws, and marketing agreements of the CMA;

(2) Any resolutions affecting loan operations;

(3) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.12(d);

(4) Any change in pooling operations with an explanation of the change and why such change was necessary; and

(5) Additional information as may be requested by CCC at any time with respect to the continued approval by CCC of the CMA.

(d) Approved CMA's must submit revised applications as required by this section every 5 years, or more often if CCC requests.

(e) CMA's applying for approval to participate in the loan program for cotton shall execute Form CCC-Cotton G, Cotton Cooperative Loan Agreement, with CCC.

### § 1425.5 Confidentiality.

Information submitted to CCC with respect to trade secrets, financial or commercial operations, or information concerning the financial condition of a CMA, whether for initial approval or continued approval, shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosures are necessary for the conduct of a loan program or such information is 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 loans and loan deficiency payments.

(b) CCC may approve a CMA to participate in a loan program with respect to the 1996 through 2002 crop of a commodity as:

(1) Unconditionally approved; or

(2) Conditionally approved.

(c)(1) A CMA may be conditionally approved if CCC determines that it has substantially met all the requirements of this part, and the failure to meet the remaining requirements is due to reasons beyond the control of the CMA and not due to the CMA's negligence; and

(2) Such CMA must agree in writing to meet all requirements for approval

set forth in this part within the time period specified by CCC. When a CMA can only comply with the regulations by amending its articles of incorporation or bylaws at a membership meeting, CCC may accept a board of directors' resolution agreeing to recommend to the members, at the next meeting of the members, the required changes to the articles of incorporation or bylaws as compliance with the requirements for approval for purposes of this section. Board resolutions in which the CMA agrees to comply with other provisions of this part may be accepted by CCC as compliance with the requirements for approval for purposes of this section.

(d) A CMA is approved to participate in a loan program for an authorized commodity until such time as the CMA's approval is suspended or terminated by CCC.

### §1425.7 Suspension and termination of approval.

(a) An approved CMA may be suspended by CCC from further participation in a loan or loan deficiency payment program if CCC determines that the CMA or a member CMA, as specified in §1425.19:

(1) Has not operated in accordance with the conditions specified in such CMA's application for approval;

(2) Has not complied with applicable regulations; or

(3) Has failed to correct deficiencies noted during an administrative review or an audit of the CMA's operations with respect to a loan program.

(b) Such suspension may be lifted upon the receipt of documents indicating that the CMA has complied with all requirements for approval. If such documents are not received within 1 year from the date of the suspension, the CMA's approval for participation in a loan program will terminate automatically.

(c)(1) CCC may terminate the approval of the CMA's ability to pledge commodities as collateral for CCC loans or loan deficiency payments by giving the CMA written notice of such termination.

(2) An approved CMA may at anytime, upon written notice to CCC, voluntarily terminate the CMA's participation in a loan program, provided that the CMA does not have any outstanding loans at the time of voluntary termination.

(d) Ten days after the date CCC suspends or terminates the approval of a CMA to participate in a loan program or anytime thereafter, CCC may, on demand, call all outstanding CCC loans made to the CMA. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

### §1425.8 Ownership and control.

(a) All approved CMA's must be owned and controlled by active members of the CMA.

(b) The CMA must establish that its active members own more than 50 percent of the allocated equity of the CMA. Such ownership equity shall be in the form of stock, revolving fund certificates, capital, retains book credits, or other capital interests issued by the CMA. In determining the requisite equity held by active members, the following shall be deducted from the amount of equity allocated to each active member:

(1) The allocated equity held by any active member who owns more than 10 percent of the CMA's total equity; and

(2) The allocated equity of any active member that has acquired equity as a result of a loan from the CMA unless the member is obligated to repay the loan within 1 year.

(c) The organization and operation of the CMA shall be under the control of its active members. A CMA shall be considered to be under the control of its active members if more than 50 percent of its membership consists of active members.

(d) All directors must be:

(1) Active members of the CMA;

(2) Representatives of active members who are also employed as a farm manager or its equivalent (including an officer of a CMA or a partner in partnership); or

(3) Officers, employees, or active members of an active member CMA; and

(4) A director shall be nominated and elected by members except when selected to fill the unexpired term of a director so elected.

(e) An applicant or an approved CMA not under the ownership or control, or both, of its active members, may be approved by CCC to participate in a loan program if the CMA is able to establish that, by retiring the equity of its inactive members or by obtaining new members, the CMA can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

### § 1425.9 Charter and bylaw provisions.

(a) The articles of incorporation, articles of association, or the bylaws of the CMA shall comply with each of the following requirements:

(1) The CMA shall hold an annual meeting of members or delegates at one or more locations within its operating area that will afford a reasonable opportunity for all members or their delegates to attend and participate;

(2) The CMA shall give written notice to each member or delegate, of the time, place, and purpose of all regular and special meetings of members or delegates; and

(3) The CMA shall admit to membership every applicant who applies for admission for the purpose of participating in the activities of the CMA, and is eligible for membership under the statute incorporating the CMA.

(b) A CMA may refuse membership to an applicant whose admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the CMA.

(c)(1) Nominations for election of delegates and directors shall be made by members.

(2) Nominations for officers shall be made by elected directors or by members when nomination by members is authorized in the CMA's articles of incorporation or bylaws.

(3) Nominations may be made by balloting, nominating committee, petition of members, or from the floor, provided that nominations from the floor shall be requested in addition to nominations made by a nominating committee or by petition.

(d) The election of directors, delegates, and officers shall be by ballot when there are two or more nominees for a position, or there are more nominees than there are positions to be filled.

(e) Each member of the CMA shall have a single vote except that CCC may approve another voting method that will adequately protect the ownership and control interests of the members of the CMA.

(f) Voting by proxy shall be prohibited, except if a CMA:

(1) Determines that voting by proxy is necessary to amend the CMA's articles of incorporation, articles of association, or bylaws; and

(2) Establishes, to the satisfaction of CCC, that the law of the State in which the CMA is incorporated permits voting by proxy, but does not permit members to vote by mail, with respect to such issue.

(g) Each member of the CMA shall annually be given a summary financial statement of the CMA that is based on an annual audit conducted by a certified public accountant.

### § 1425.10 Financial condition.

(a) An approved CMA must be financially able to make financial advances to its members and to market commodities of such members.

(b) The factors that will be considered in determining the financial condition of a CMA include:

(1) The ability of the CMA to meet current obligations, including the expenses of marketing the commodities on behalf of its members; and

(2) The ability of the CMA to make advance payments to its members, either from its own funds or through arrangements with financial or other institutions.

(c) The CMA shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in table 1) multiplied by the total number of such units of commodity for which the CMA is approved, or requesting approval, to participate in loan programs and handled by the CMA during the preceding marketing year,

or, if the CMA is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year.

(1) If the amount of the net worth of the CMA is between 34 and 99 percent of the amount computed in accordance with paragraph (c), and the CMA is determined by CCC to be otherwise financially sound, CCC may determine that such CMA meets the requirements of this section. Such a determination by CCC may be made if:

(i) The board of directors of the CMA agrees to retain capital in the amount set forth in table 2 with respect to each unit of the commodity delivered to the CMA until the net worth of the CMA is at least equal to the amount computed in accordance with paragraph (c), and

(ii) The CMA agrees to deduct from pool proceeds the full amount of the estimated expenses of handling the commodities received by the CMA.

(2) The failure to carry out such capital retention agreements shall be grounds for suspending a CMA approval.

Table 1

| Commodity | Unit | Amount per unit |
|---|---|---|
| Barley | Bushel | 0.13 |
| Canola | Hundredweight | 0.62 |
| Corn | Bushel | 0.13 |
| Cotton | Bale | 6.40 |
| Flaxseed | Hundredweight | 0.62 |
| Mustard Seed | Hundredweight | 0.62 |
| Oats | Bushel | 0.13 |
| Rapeseed | Hundredweight | 0.62 |
| Rice | Hundredweight | 0.52 |
| Safflower | Hundredweight | 0.62 |
| Seed Cotton (lint basis) | Pound | 0.008 |
| Sorghum | Hundredweight | 0.19 |
| Soybeans | Bushel | 0.43 |
| Sunflower Seed | Hundredweight | 0.62 |
| Wheat | Bushel | 0.15 |

Table 2

| Commodity | Unit | Amount per unit |
|---|---|---|
| Barley | Bushel | 0.07 |
| Canola | Hundredweight | 0.32 |
| Corn | Bushel | 0.07 |
| Cotton | Bale | 3.20 |
| Flaxseed | Hundredweight | 0.32 |
| Mustard Seed | Hundredweight | 0.32 |
| Oats | Bushel | 0.07 |
| Rapeseed | Hundredweight | 0.32 |
| Rice | Hundredweight | 0.26 |
| Safflower | Hundredweight | 0.32 |
| Seed Cotton (lint basis) | Pound | 0.004 |
| Sorghum | Hundredweight | 0.10 |
| Soybeans | Bushel | 0.22 |

Table 2—Continued

| Commodity | Unit | Amount per unit |
|---|---|---|
| Sunflower Seed | Hundredweight | 0.32 |
| Wheat | Bushel | 0.08 |

(d) For the purposes of paragraphs (b) and (c), the net worth of the CMA shall be reduced by the value of the amount of any assets or funds that are not reflected as a liability of the CMA in the financial statement of the CMA and that are:

(1) Pledged as security, deposited, or otherwise used to secure or guarantee any indebtedness of the CMA; or

(2) Deposited in a restricted account or otherwise used to guarantee the performance of an obligation of the CMA.

## § 1425.11 Operations.

(a) A CMA shall establish to the satisfaction of CCC, with respect to the commodity for which approval is requested, that the CMA is so organized and staffed by individuals employed directly by the CMA that it is able to perform contracts with its members and to provide an effective marketing operation for its members.

(b) If a CMA cannot satisfactorily establish that it can provide an effective marketing operation for its members, the CMA may enter into a marketing agreement with another CMA to market the commodity only if:

(1) Such marketing agreement is permitted by law;

(2) The articles of incorporation, articles of association, or bylaws of the CMA acquiring the marketing service and the marketing agreement such CMA has entered into with its members provide the necessary authority to enter into such agreement;

(3) The CMA acquiring the marketing service is a member of the CMA that will provide the marketing service; and

(4) The CMA that will provide the marketing service has been approved under this part to obtain loans for such commodity.

(c) Any marketing agreement entered into by a CMA in accordance with the provisions of paragraph (b), must, as determined by CCC:

(1) Adequately protect the ownership and control interests of the CMA members;

(2) Be in the best interest of the members of the CMA acquiring the service; and

(3) Require that all proceeds from the marketing operation be distributed as provided in § 1425.18.

**§ 1425.12 Conflict of interest.**

(a) The CMA shall not be approved for participation in loan programs unless CCC determines that the CMA's transactions, if any, that are of a kind described in this section, have not operated and will not operate to the detriment of members of the CMA.

(b) The CMA shall submit with the initial application for approval, and with each recertification, a detailed report concerning all of the transactions of the CMA (including transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities) with the following persons that differ from transactions entered into by the CMA with its general membership:

(1) Any director, officer, or principal employee of the CMA, or any of their family members;

(2) Any partnership from which any person is entitled to receive a percentage of the gross profits;

(3) Any CMA in which any person owns stock;

(4) Any business entity from which any person receives fees for transacting business with or on behalf of the CMA; or

(5) Any business entity in which an agent, director, officer or employee of the CMA was an agent, director, officer or employee of such business entity.

(c) The CMA shall also submit a statement as to whether any transactions of the kind described in paragraph (b) are contemplated between the date of the application, or the date such information is requested to be submitted in accordance with § 1425.4, as applicable, and the end of the next marketing year for the authorized commodity. If any transactions are contemplated, the CMA shall submit a detailed explanation of such contemplated transactions and a statement of the reasons for such transactions.

(d) The CMA shall furnish information, as requested, showing the interest or relationship of its directors, officers, and principal employees and their family members with persons who engage in any business relating to a commodity for which the CMA is approved to obtain loans. Such information shall be revised to reflect any change in any such interest or relationship.

**§ 1425.13 Uniform marketing agreement.**

(a) The CMA must enter into a uniform marketing agreement with each member who delivers a commodity to an eligible pool for which a loan is obtained on any quantity of the commodity in such pool.

(b) A CMA may provide alternative methods of marketing commodities to its members, in addition to the methods set forth in its marketing agreement, if the terms and conditions thereof are reasonable to its members, and information concerning the use of such methods of marketing are made available to all members.

(c) An approved CMA, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for a period not to exceed 2 crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the CMA, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the CMA's membership publication or included in other written notice mailed to members.

**§ 1425.14 Member business.**

At least 80 percent of a crop of an authorized commodity that is acquired by, or delivered to, the CMA for marketing must be produced by its members in order for the CMA to obtain a loan for such crop. CCC may, for a period not to exceed 2 years, waive such requirement for a CMA if:

(a) The quantity of such crop acquired by the CMA for marketing, from its members, has a value greater than the value of the quantity acquired or received from nonmembers for marketing;

(b) The CMA can establish to the satisfaction of CCC that such authorization is necessary for the efficient operation of the CMA; and

(c) The CMA has a plan, approved by CCC, that CCC determines to be in the CMA members' best interest and will bring the CMA into compliance with the provisions of this section. 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.**

An approved CMA shall have the authority to pledge as collateral for a loan the commodity delivered to it by its members, 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.**

Approved CMA's shall monitor marketing loan gains, loan deficiency payments, and other payments they receive from CCC on behalf of their members and ensure that the sum of the amounts received for each member does not exceed 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 pools as needed for quantities of a commodity.

(b) Loans will be made available to approved CMA's with respect to a quantity of an eligible commodity included in an eligible pool as provided in paragraph (e) and the beneficial interest provisions of parts 1421 and 1427 of this chapter.

(c) A pool shall be eligible for loans if:

(1) All of the commodity included in the pool is eligible for loans, except as provided in paragraph (d);

(2) The eligible commodity in such pool was delivered to the CMA for marketing for the benefit of the members of the CMA by members who retain the right to share in the proceeds from the marketing of the commodity in accordance with § 1425.18.

(3) Except with respect to a quantity of a commodity pledged as collateral for a loan and that is redeemed within 15 work days from the date the CMA receives the proceeds from CCC, all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the CMA with respect to such commodity in accordance with § 1425.18(a).

(d) If CCC determines that a CMA has inadvertently included in a pool a quantity of commodity that is ineligible for loan because of grade, quality, bale weight or repacking in the case of cotton, or other factors, the remaining quantity of commodity shall remain eligible for loan.

(e) Loans and Loan Deficiency Payments will be available to the CMA for the quantity of a commodity stored commingled in an approved warehouse equal to the smaller of:

(1) The quantity of an eligible commodity received from members of the CMA; or

(2) the quantity of commodity that is in the CMA's inventory.

(f) The CMA must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of 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 pool.

(h) Except as provided in paragraph (c)(2), loans will be available to the CMA for the quantity of the eligible commodity stored identity preserved in an approved warehouse that was received from members of the CMA and that is in the CMA's inventory at the time the commodity is pledged as collateral for a 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 an approved CMA's financial agreements or the CMA shall obtain a completed Form CCC–679, Lien Waiver. Approved 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 is obtained with respect to any quantity of a crop of a commodity that has been pooled, allocations by the CMA of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(l)(1) Any losses incurred by the CMA in the marketing of a crop of a commodity for which a loan has not been obtained shall not be assessed against the proceeds from the marketing of a crop of a commodity included in a pool for which a loan was obtained.

(2) Except as provided in paragraph (l)(3), losses incurred by the CMA in the marketing of a crop of a commodity included in a pool for which a loan has been obtained may not be carried forward and applied against subsequent crops of commodities included in a pool for which a loan is obtained.

(3) CCC may authorize an approved CMA to carry forward losses incurred by the CMA in the marketing of a crop of a commodity included in a pool for which a loan has been obtained when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the loan program.

(4) The authorization referred to in paragraph (l) will be approved on the basis of a plan, subject to the approval of CCC, for the carrying forward of losses submitted by an approved CMA and will be continued on the condition that the approved CMA remains in substantial compliance with the approved plan, as reflected in periodic progress reports.

(5) Factors that will be considered in determining whether to approve such a plan include, but are not limited to, the following:

(i) The stability of the membership and participation between affected pools;

(ii) the financial condition of the CMA; and

(iii) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period.

(6) The plan submitted by the CMA must include the following:

(i) A provision for notifying existing and new members of the CMA of the plan to deduct eligible pool losses from subsequent eligible pool gains; and

(ii) a procedure for maintaining necessary data and records needed to generate periodic progress reports as directed by CCC.

(7) Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan that has been approved by CCC under the criteria specified in paragraph (e)(3).

### § 1425.18 Distribution of proceeds.

(a)(1) If CCC makes available loans or loan deficiency payments with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or loan deficiency payments shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member that is included in the pool less any authorized charges for services performed or paid by the CMA that are necessary to condition the commodity or otherwise make the commodity eligible for loans or loan deficiency payments. Except with respect to commodities that are pledged as collateral for a loan and that are redeemed within 15 work days from the date the CMA receives the loan proceeds from CCC, such proceeds shall be distributed within 15 work days from such date. Loan deficiency payments received from CCC shall be distributed within 15 work days of receipt from CCC.

(2) Any advances by the CMA to its members who have a quantity of the commodity in the eligible pool for which advances are made prior to the pledging of the commodity as security for a CCC loan or used to obtain a loan deficiency payment with CCC may be credited by the CMA against the distribution required in paragraph (a)(1).

(b)(1) If loans or loan deficiency payments are obtained from CCC for any quantity of the eligible commodity in a pool, all proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member that is included in such pool.

(2) Except as provided in paragraph (b)(3), all proceeds from an eligible pool for which a loan has been obtained shall not be combined with proceeds from ineligible pools for distribution and final settlement, and the method of distribution of proceeds shall be as specified in the information provided to CCC in accordance with § 1425.4(b)(7).

(3) Sales proceeds from an eligible pool may be combined with sales proceeds from ineligible pools or other eligible pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in such pools.

(4) Pool proceeds obtained from loans made by CCC shall not be combined with proceeds from other eligible or ineligible pools.

(5) When notified by CCC that pool distributions to a member of any eligible pool must be reduced for a program year, farm, or crop, CMA shall refrain from making such pool distributions and shall, if appropriate, reimburse CCC for such distributions.

(c) If a CMA has attempted to distribute to its members a part of its equity, as defined in § 1425.8, in accordance with the articles of incorporation, articles of association or the bylaws of the CMA and has given notice of distribution both by publication and personal letter addressed to such members, the CMA may provide, to the extent permitted by the law of the State applicable to such distribution, for reallocation of such undistributed equity to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run, such period to begin on the date the equity to be distributed was declared to be payable by the CMA;

(2) The CMA, 30 days prior to the lapse of the period of limitation specified in paragraph (c)(1), has given the affected member notice (by certified mail, return receipts requested, at the member's last known address as reflected on the books of the CMA) of the amount of equity payable to such member(s) and notice that such equity may be distributed to other members and patrons if the affected member does not make a claim for such equity within the period of limitation specified in paragraph (c)(1); and

(3) No claim for payment of the equity to be distributed has been made within the period of limitation described in paragraph (c)(1).

**§ 1425.19 Member CMA's.**

(a) Except as provided in paragraph (c) for a CMA to obtain loans or loan deficiency payments for any quantity of an eligible commodity delivered by a member CMA or for a CMA to obtain loans for any quantity of an eligible commodity included in the same pool with the commodity delivered by a member CMA, the CMA and such member CMA must meet the requirements of this paragraph.

(1) The eligible commodity delivered by the member CMA must be produced by the members of such member CMA.

(2) The member CMA must be authorized to:

(i) Sell the commodity;

(ii) Pledge such commodity as collateral for a loan;

(iii) Place a lien on such commodity; and

(iv) Deliver such commodity to the CMA for marketing.

(3) The CMA must either:

(i) In its articles of incorporation, articles of association, bylaws, or marketing agreement, require each such member CMA to meet the requirements of this part; or

(ii) Determine and certify annually to CCC that each such member CMA meets the requirements of this part.

(b) The CMA shall determine and certify annually to CCC that its member CMA's that are not subject to paragraph (a) are in compliance with the producer ownership, membership meeting, and voting requirements of applicable State law.

(c) An approved CMA is required to meet only the provisions contained in paragraphs (a) (1) and (2) with respect

to a member CMA for whom the member CMA markets the production of the member CMA's members in accordance with § 1425.11(b).

### § 1425.20 [Reserved]

### § 1425.21 Records required.

(a) An approved CMA and its member CMA's shall maintain a record that shows the quantity of commodity that is received from each of its members and nonmembers, the date received, the eligibility status for loans of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable quality factor applies.

(b) The CMA shall maintain a record that shows each quantity of commodity that is disposed of; and, if sold, the date sold and the price received; and the date removed for processing or shipped. Except as provided in paragraph (c), inventory shall be allocated in the following manner until the entire inventory in a particular pool is depleted:

(1) Commodities that are processed. The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted at the time the commodity is withdrawn from inventory for processing.

(2) Commodities not processed. The quantity of a commodity to be shipped shall be allocated to an eligible pool, an ineligible pool, or a combination of eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

(c) Records of eligible and ineligible pool dispositions need not be maintained separately so long as sales proceeds from such pools are allocated among the pools according to the quantity and quality of commodity included.

### § 1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the approved CMA, member CMA's, and subsidiaries, shall be maintained for a period of 5 years and shall be made available to CCC for inspection and examination at all reasonable times.

(b) CCC shall have the right at any time after an application is received, 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, bylaws, 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) Approved CMA's shall annually provide CCC with a report to applicable county FSA offices. The report shall include all eligible and ineligible commodity receipts by FSA farm number for each member.

(b) Approved CMA's shall at least annually report by commodity and by crop the marketing loan gains, loan deficiency payments, and any other CCC program payments received on behalf of each producer member.

### § 1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 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.

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AUTHORITY: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b and 714c.

## 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.

### § 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 in good condition at the time of disbursement of the loan or loan deficiency payment proceeds, except as provided in § 1427.23(f);

(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.

### § 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 receipt and insurance.

(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 are acceptable to CCC. Any open yard endorsement on the warehouse receipt must have been rescinded. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Show that the cotton is covered by fire insurance; and

(4) 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.

### § 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 (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) 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 (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25

grams per tex) 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 (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) 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 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) 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 1 3/32 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 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) 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 1 3/32 inch cotton C.I.F. northern Europe, or

(ii) the average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) 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 (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton for SLM 1 1/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) 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.

### § 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)(1) During the period beginning August 1, 1991, and ending July 31, 2003, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in any week following a consecutive 4-week period in which—

(i) 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 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 price'') by more than 1.25 cents per pound; and

(ii) The adjusted world price for upland cotton, determined in accordance

with § 1427.25, does not exceed 130 percent of the current crop year loan level for the base quality of upland cotton.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, CCC shall not issue marketing certificates or cash payments if, for the immediately preceding consecutive 10-week period, the U.S. Northern Europe price, adjusted for the value of any certificates or cash payments issued under paragraph (b)(1) of this section, exceeds the Northern Europe price by more than 1.25 cents per pound.

(3) Notwithstanding the provisions of this subpart, user marketing certificate program payments shall not exceed $701,000,000 during fiscal years 1996 through 2002. Any outstanding obligations incurred by CCC to exporters under this program before April 5, 1996, will not be subject to the $701,000,000 limitation. Obligations incurred by CCC on or after April 5, 1996, will be charged against the $701,000,000.

(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]

### § 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.

*Optional origin export contract* means a contract under which an exporter may sell cotton produced in a foreign country with the option to substitute cotton produced in the United States.

*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.

**§1427.103 Eligible upland cotton.**

(a) For the purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which is—

(1) Opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2003, or, excluding cotton covered under paragraph (a)(2), 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); or

(2) Sold for export by an eligible exporter under a written contract entered into on or after August 1, 1991, and prior to July 18, 1996 during a Friday through Thursday period in which a payment rate, determined in accordance with §1427.107, is in effect and which is contracted for delivery by the eligible exporter by not later than September 30, 1996, and which meets the requirements of paragraphs (b) and (c).

(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]

### § 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 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, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward an original and two copies to KCCO.

### § 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) The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be determined by CCC as follows:

(1) For exporters for cotton shipped on or after July 18, 1996 (excluding cotton covered under paragraph (a)(2)) and for domestic users for bales opened during the period—

(i) For bales opened beginning the Friday following August 1 and ending the week in which the Northern Europe current price and the Northern Europe forward price first become available, the payment rate shall be the difference between the U.S. Northern Europe price minus 1.25 cents per pound, and the Northern Europe price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe price exceeded the Northern Europe price each week by more than 1.25 cents per pound, and the adjusted world price (AWP) did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period.

(ii) Beginning the Friday through Thursday week after the week in which the NEc price and the NEf price 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 130 percent.

(iii) For bales opened before August 30, 1991, the payment rate shall be zero.

(2) For exporters prior to July 18, 1996 for cotton which is contracted for delivery by not later than September 30, 1996,—

(i) For contracts entered into beginning the Friday following August 1 and ending the week in which the Northern Europe current price and the Northern Europe forward price first become available which specify shipment of the cotton by not later than September 30 of the following marketing year, the payment rate shall be the difference between the U.S. Northern Europe price minus 1.25 cents per pound, and the Northern Europe price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe price exceeded the Northern Europe 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 130 percent in any week of the 4-week period.

(ii) For contracts entered into during the period beginning the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available and ending the Thursday following July 31 which specify shipment of the cotton by not later than September 30 of such year, the payment rate shall be the difference between the U.S. Northern Europe current price minus 1.25 cents per pound and the Northern Europe current price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe current price exceeded the Northern Europe current 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 130 percent in any week of the 4-week period.

(iii) For contracts entered into prior to the Friday through Thursday week that includes October 1 which specify shipment after September 30 of the year following such contract period, the payment rate shall be zero.

(iv) For contracts entered into during the period beginning the Friday through Thursday week that includes October 1 until the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available which specify shipment of the cotton after September 30 following such contract period, payments shall be made whenever the U.S. Northern Europe price exceeds the Northern Europe price by more than 1.25 cents per pound for the preceding consecutive 4-week period and the AWP did not exceed the current crop year loan level for the base quality of upland cotton by more than 130 percent in any week of such 4-week period. The payment rate shall be the lower of:

(A) The difference between the U.S. Northern Europe price minus 1.25 cents per pound and the Northern Europe price in the fourth week of such 4-week period; or

(B) 2.5 cents per pound.

(v) For contracts entered into beginning the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available through the third Friday through Thursday week after the Northern Europe current price and the Northern Europe forward price first become available which specify shipment of the cotton after September 30 following such contract period, payments shall be made whenever the U.S. Northern Europe current price exceeds the Northern Europe current price by more than 1.25 cents per pound for the preceding consecutive 4-week period and the AWP did not exceed the current crop year loan level for the base quality of upland cotton by more than 130 percent in any week of such 4-week period. The payment rate shall be the lower of:

(A) The difference between the U.S. Northern Europe current price minus 1.25 cents per pound and the Northern Europe current price in the fourth week of such 4-week period; or

(B) 2.5 cents per pound.

(vi) Notwithstanding the provisions of paragraphs (a)(2)(iv) and (a)(2)(v) of this section, with respect to contracts which specify shipment of the cotton

after September 30, 1994, but before September 30, 1995, no payments will be made on contracts made prior to the fourth Friday through Thursday week after the Northern Europe current price and the Northern Europe forward price first become available during calendar year 1994.

(vii) For contracts entered into during the period beginning the fourth Friday through Thursday week after the Northern Europe current price and the Northern Europe forward price first become available and ending the Thursday following July 31 which specify shipment of the cotton after September 30 following such contract period, payments shall be made whenever the U.S. Northern Europe forward price exceeds the Northern Europe forward price by more than 1.25 cents per pound for the preceding consecutive 4-week period and the AWP did not exceed the loan level for the upcoming marketing year for the base quality of upland cotton by more than 130 percent in any week of such 4-week period. The payment rate shall be the lower of:

(A) The difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the fourth week of such 4-week period; or

(B) 20 percent of the difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the fourth week of such 4-week period plus the payment rate for which such contracts were eligible in the preceding week.

(viii) For contracts entered into before August 30, 1991, the payment rate shall be zero.

(b) Notwithstanding the provisions of paragraph (a) of this section, no payment rate shall be established in a week following a consecutive 10-week period in which the U.S. Northern Europe price, adjusted for the value of any certificate or cash payment issued in accordance with paragraph (a) of this section, exceeds the Northern Europe price by more than 1.25 cents per pound.

(c) Notwithstanding the provisions of paragraph (a) of this section, whenever a 4–week period contains a combination of Northern Europe prices only for one to three weeks and Northern Europe current prices and North Europe forward prices only for one to three weeks such as occurs in the spring when the Northern Europe price is succeeded by the Northern Europe current price and the Northern Europe forward price (''spring transition period''), and at the start of a new marketing year when the Northern Europe current price and the Northern Europe forward price are succeeded by the Northern Europe price (''marketing year transition''):

(1) Under paragraphs (a)(1)(i) and (a)(2)(i) of this section, during the marketing year transition period, the Northern Europe forward price and the U.S. Northern Europe forward price in combination with the Northern Europe price and the U.S. Northern Europe price shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(2) Under paragraphs (a)(1)(ii), (a)(2)(ii), and (a)(2)(v) of this section, during the spring transition period, the Northern Europe current price and the U.S. Northern Europe current price in combination with the Northern Europe price and the U.S. Northern Europe price shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(d) Notwithstanding any other provision of this section, for contracts made by exporters prior to July 18, 1996, that specify shipment of the cotton by not later than September 30, 1996,—

(1) If shipment is completed by October 31 of such year, the payment rate shall be the payment rate established for the contract;

(2) If shipment is not completed by October 31 of such year, the payment rate shall be zero.

(3) If shipment is not completed by December 31 of such year, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the

original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the original contract payment rate or, if a replacement contract has been made, the replacement contract payment rate, or

(ii) 50 percent of the original contract payment rate.

(e) For U.S. cotton sold by the exporter under an optional origin contract for delivery by not later than September 30, 1996, prior to July 18, 1996, the payment rate shall not be established until the exporter notifies CCC in writing that the cotton shipped or to be shipped was or will be of United States origin. Upon receipt of such notification, CCC will establish the payment rate for cotton shipped under such contract at the lower of:

(1) The payment rate in effect when the optional origin contract was made, or

(2) The payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped, or to be shipped, under such contract was, or shall be, of United States origin.

(f) For the purposes of this subpart—

(1) With respect to the determination of the U.S. Northern Europe price, the U.S. Northern Europe current price, the U.S. Northern Europe forward price, the Northern Europe price, the Northern Europe current price and the Northern Europe forward price—

(i) If daily quotes are not available for one or more days of the 5-day period, the available quotes during the period will be used.

(ii) If no daily quotes are available for the entire 5-day period for either or both the U.S. Northern Europe price and the Northern Europe 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 U.S. Northern Europe current price and the Northern Europe current price; or the U.S. Northern Europe forward price and the Northern Europe forward price, that week will not be taken into consideration, in which 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 latest available week.

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc price and the NEc price, the marketing year transition shall be implemented immediately as provided for in paragraph (c)(1).

(2) With respect to the determination of the U.S. Northern Europe price, the U.S. Northern Europe current price, and the U.S. Northern Europe forward price, if a quote 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 or any day of the 5-day period, the available quote will be used.

(g) Payment rates for loose, reginned motes and semi-processed motes which 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.

[56 FR 41435, Aug. 21, 1991, as amended at 56 FR 59853, Nov. 26, 1991; 57 FR 14329, Apr. 20, 1992; 57 FR 49639, Nov. 3, 1992; 58 FR 42843, Aug. 12, 1993; 59 FR 17919, Apr. 15, 1994; 61 FR 37611, July 18, 1996]

### §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) From August 1, 1991, through July 17, 1996, sold by the exporter on the date the contract for sale is confirmed in writing and which is contracted for delivery by not later than September 30, 1996; and

(3) Excluding cotton covered under paragraph (c)(2), through July 31, 2003, exported by the exporter on the date that 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]

### § 1427.109 Contract cancellations.

(a) For the purposes of this subpart, except as provided in paragraph (e) of this section, any contract entered into by an exporter that is canceled or amended to reduce the contract quantity shall be replaced by the exporter with a subsequent contract (''replacement contract'') designated by the exporter at the time a copy of the replacement contract is submitted to CCC, as specified in the Upland Cotton Domestic User/Exporter Agreement (''the Agreement''). Optional origin export contracts that are canceled/amended must be replaced with either an optional origin export contract or a contract to export United States cotton. The replacement contract shall specify shipment of the cotton by not later than September 30 following the shipment date specified in the original contract, except if the cancellation/amendment of a contract that specified shipment by not later than September 30 occurs after September 1, the replacement contract shall be entered into within 30 days after the cancellation/amendment and shipment shall be completed within 30 days after the replacement contract is entered into, but in no event may shipment be completed later than December 31. The provisions of this paragraph shall apply to—

(1) All undelivered (open) export contracts (including optional origin export contracts) outstanding as of the later of the date the Agreement was executed by the exporter or August 29, 1991;

(2) Any export contracts that were canceled, or amended to reduce the contract quantity, between the later of June 18, 1991, or 75 days prior to the date the Agreement was executed by the exporter and the later of the date the Agreement was executed by the exporter or August 29, 1991, which are not replaced by the later of the date the Agreement was executed by the exporter or August 29, 1991; and

(3) All new export contracts entered into by the exporter on or after August 30, 1991, and prior to July 18, 1996 which are for delivery by not later than September 30, 1996.

(b) Notwithstanding the provisions of § 1427.107, the payment rate for a replacement contract shall be the lesser of the payment rate in effect on the date of the original contract or the payment rate in effect on the date of the replacement contract.

(c) If shipment of the cotton on any replacement contract is—

(1) Completed by October 31, the payment rate shall be the payment rate determined in accordance with paragraph (b) of this section;

(2) Not completed by October 31, the payment rate shall be zero;

(3) Not completed, or a replacement contract is not designated by the exporter by December 31, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the payment rate determined in accordance with paragraph (b) of this section, or

(ii) 50 percent of the original contract payment rate.

(d) Notwithstanding the provisions of paragraphs (a) through (c) of this section, with respect to optional origin export contracts, shipment of foreign cotton will fulfill the shipment requirements but such cotton will be ineligible for payments.

(e) The provisions of paragraphs (a) through (d) of this section will not apply if CCC determines, based upon written evidence provided by the exporter, that a contract cancellation, amendment, or failure to export is due to reasons beyond the control of the exporter. If, as determined by CCC, the cancellation is beyond the control of the exporter, replacement contracts are not required, and the assessment of liquidated damages by CCC is waived. Documentation to support that contract cancellations are beyond the control of the exporter must be submitted to CCC. Requests for relief from naming a replacement contract will be examined by CCC on a case-by-case basis to determine if relief is warranted.

[56 FR 41435, Aug. 21, 1991, as amended at 58 FR 42843, Aug. 12, 1993; 61 FR 37611, July 18, 1996]

## 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]

# PART 1430—DAIRY PRODUCTS

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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 year 1999.

(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.

### § 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, 1999. 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 which 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.

### § 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, 2000, 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.

### § 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, 2000.

(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.

### § 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''.

## PART 1434—HONEY

AUTHORITY: 7 U.S.C. 1421, 1423, 1425a, 1446h, 4601 et seq.; 15 U.S.C. 714b and 714c.

### § 1434.1 Termination.

The price support and loan deficiency program for honey was terminated at the conclusion of the 1995 marketing year. The regulations setting forth the applicable terms and conditions for the Honey Program for the 1995 and prior marketing years found at part 1434 of this title as of January 1, 1996, shall be applicable to determinations made with respect to the administration of loans outstanding on or after July 18, 1996.

[61 FR 37618, July 18, 1996]

## PART 1435—SUGAR PROGRAM

### Subpart A—General Provisions

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### 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.

(a) The regulations of this part in effect on January 1, 1995, shall govern the price support loan program and producer protections for the 1995 crop year. These regulations have been removed from the CFR but may be found in the previous CFR volume containing revisions as of January 1, 1995.

(b) 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.

**§ 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* means the period from July 1 through June 30, inclusive. In referring to the crop year for a particular crop, the crop year begins on July 1 of the year of that crop. For example, the crop year for the 1996 crop begins on July 1, 1996, and is referred to as the ''1996 crop year.'' The 1996 crop means sugar processed from domestically-produced sugar beets or sugarcane during the 1996 crop year. Sugar from desugaring molasses is considered to be from the crop year during which 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 = $\{[(\text{actual degree of polarization} - 92) \times 0.0175] + 0.93\} \times$ 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.

### § 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 earlier than October 1 and no later than June 30 of the applicable 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)(1) Notwithstanding any other provision of this subpart, relative to sugar processed from sugar beets or sugarcane that normally is harvested during July, August, and September, a processor:

(i) May obtain a loan on such sugar;

(ii) Must settle the loan by September 30 following disbursement; and

(iii) May request a supplemental recourse or nonrecourse loan, depending on which type of loan is in effect according to §1435.102.

(2) Such supplemental loan:

(i) Shall be requested by the processor during the following October;

(ii) Shall be at the loan rate in effect at the time the supplemental loan is made; and

(iii) Shall mature in 9 months minus the number of whole months that the initial loan was in effect.

**§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) 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.

### § 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) 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.

### §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.

## 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 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM REGULATIONS FOR THE 1996 AND SUCCEEDING CROP YEARS

Sec.

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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.

For the 1996 and susbsequent 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. Production for both the applicable area expected yield and the individual producer approved yield for the unit must fall below specified percentages in order to be eligible for payments under this part.

The provisions contained in this part are applicable to each eligible producer and each eligible crop for which catastrophic coverage is not otherwise available.

### §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 recommendation of eligibility must be approved by the Executive Vice President, CCC, or a designee.

(g) The Executive Vice President, CCC, or a designee, will determine all yields and prices under this part.

### §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 |

*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.

*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 example, pound, bushel, ton, for an eligible crop established by CCC for determining NAP payments. 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.

*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 shall also include floricultural, 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. In the case of a crop 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.

*Expected area yield* means the eligible crop yield established and approved by CCC for the geographic area.

*Forage* means land covered with grass or other vegetation, produced under such range management practices as are necessary to sustain sufficient quality and quantity of grass or vegetation each year to be suitable for grazing or mechanical harvest to feed livestock in a commercial operation. NAP benefits for forage produced on any 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.

*Harvested* means a single harvest crop is considered harvested when the producer has, by hand or mechanically, removed the crop from the field. Crops with multiple harvests in one 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 crop is considered harvested once it is removed from the field and placed in a truck or other conveyance, except:

(1) Hay is considered harvested when in the bale, whether removed from the field or not; and

(2) Grazing is not considered harvesting for the purpose of determining a payment rate factor.

*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 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.

*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 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.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. No unit other than that stated herein will be permitted.

### § 1437.4 Eligibility.

(a) Eligible crops 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 under part 402 of this title. 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.

(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; 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.

### § 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.

**§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 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.

### § 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, and intended use;

(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.

### § 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 customary 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.

### § 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 either:

(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.

### § 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—General Provisions

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EDITORIAL NOTE: Nomenclature changes to part 1439 appear at 61 FR 32644, June 25, 1996.

## Subpart—General Provisions

### §1439.1 General statement.

The regulations in this part set forth the terms and conditions of the programs which may be made available to eligible owners for 1990 and subsequent livestock feed crop year disasters. The objective of these programs is to provide emergency feed assistance to eligible livestock owners in a State, county, or area approved by the Executive Vice President, CCC, where because of disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster, a livestock emergency exists. These programs, except the Crash Feed Grain Donation Program, also provide feed assistance to eligible livestock owners for the preservation and maintenance of livestock in any county contiguous to a county where a livestock feed emergency has been determined to exist at any time during an 8-month period beginning on the date that such an emergency has been determined to exist in the other county. The program or programs which are made available in the event of the occurrence of a livestock feed emergency shall be determined by the Executive Vice President, CCC. With the exception of the Prickly Pear Cactus Burning Program and Crash Feed Grain Donation Program contained at §1439.401 through §1439.504 of this part, in order to receive assistance under this part a person must enter into a contract with CCC in order to receive such assistance from CCC.

### §1439.2 Administration.

(a) This part shall be administered by CCC 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 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 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 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, 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.

### §1439.3 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons and things, words imparting the plural include the singular, words imparting the masculine gender include the feminine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

*Actively engaged in livestock production or husbandry, or dairy production* means:

(1) Possessing a beneficial interest in eligible livestock as defined in this part; and

(2) Possessing a financial risk in regards to the eligible livestock.

*Adjusted CCC Value* means the PCP adjusted for loan premiums and discounts, as applicable.

*Adjusted total benefits available* means the total monetary value of assistance for which the owner is eligible to receive as recomputed and entered on the addendum to the contract due to changes in feed available or changes in livestock during the feeding period.

*Approving official* means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance and contract made in accordance with this part.

*Area* means any part of a State or county including Indian reservations.

*FSA* means the Farm Service Agency.

*Beef cow* means a bovine animal kept for breeding and that is pregnant or lactating.

*CCC* means the Commodity Credit Corporation.

*Commercial Feedlot* means an establishment that is primarily engaged in the fattening of beef cattle, goats, swine, and lambs in a confined area for a period of at least 30 days, on a fee or contract basis for profit.

*Contact person* means the person who is designated in the contract as the person to receive communications from CCC concerning the contract.

*Contract* means the emergency livestock feed program contract, appendix and addendum thereto when executed by the livestock owner and approved by a representative of the CCC.

*Contracting entity* means the owner or owners who enter into an emergency livestock feed program contract for payment, to purchase necessary grain or roughage under one or more of the programs of this part and are party to the same contract.

*County* means a county or similar geographic area as determined by CCC.

*Crop year* means a period determined by CCC which begins when normal grazing of new pasture growth becomes available in the spring and ends 12 months later.

*Dairy cow* means a bovine animal which is owned or leased for the purpose of producing milk for commercial marketing and that is pregnant or lactating.

*DASCO* means the Deputy Administrator, or Assistant Deputy Administrator State and County Operations, FSA, U.S. Department of Agriculture.

*Dry supplemental feed* means a dry feed ingredient, or combination of dry feed ingredients, derived as by-products from processing feed and feed grains, oil seeds, meat, fish, citrus, sugar beets, or dairy products that are added to other dry feed materials to improve the nutritional balance or performance of the total feed ration. Antibiotics, emulsifiers, hormones, minerals, and vitamins, as determined and announced by CCC are also included.

*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 best suits the owner's livestock operation which is consistent with acceptable feeding practices and which was not produced by the owner except for feed grain pledged as collateral for a farm stored price support loan or upon which assistance has not been provided. Any type of crop not normally considered as a feed grain may if the crop will be feed to the owners livestock, as determined by CCC, be considered as a feed grain and be considered in providing assistance to the owner. If assistance on such crop is requested by the owner, all such crops produced by the owner shall be considered when making a determination of the monetary value of feed available. Such crop shall not be used in determining the monetary value of feed production loss.

*Eligible 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 fish used for food. Buffalo and beefalo are also included when maintained on the same basis as beef cattle. Eligible livestock used for determining feed assistance are those livestock that are part of a foundation herd (including producing dairy cattle) or offspring or are purchased as part of a normal operation and not to obtain additional benefits under this part. Eligible livestock also includes:

(1) Livestock inherited by the owner, or

(2) Purchased by the owner as part of a complete farm operation.

*Equine animals* means horses, mules, and donkeys, and includes animals:

(1) Used commercially for human food, or

(2) Kept for producing food and fiber on the owner's farm, such as draft horses, or cow ponies. Eligible equine animals are limited to the number needed to produce food and fiber on the owner's farm or breed horses and mules to be used to produce food and fiber on the owner's farm, and does not include such animals which are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

*Equine animals for food* means those horses which are maintained for commercial sale of food processors for human consumption.

*Executive Vice President* means the Executive Vice President, CCC, or a designee of the Executive Vice President.

*Feed available* means the owner's current year feed production on hand on the date the feeding period begins. Feed available shall also include any feed on hand owned by the owner of eligible livestock on the date of application as provided in § 1439.6 of this subpart.

*Feed dealer or manufacturer* means a person engaged in selling processed feed who is approved by the county committee to advance processed feed from such person's inventory to approved owners when requested to do so by the county committee under a feed dealer's agreement executed with CCC.

*Feeding period* means: (1) For all livestock except fish for food, the period beginning and ending on the dates determined as follows: The period shall begin on the later of:

(i) The date of the application for assistance; or

(ii) The authorization of the implementation of the program. The period shall end on:

(iii) If both grazing and nongrazing livestock are included, the earlier of the date when additional feed is normally expected to become available; or

(iv) The end of the crop year or the end of the grazing period if pasture (including wheat pasture) is the only crop produced; or

(v) If only nongrazing livestock are included on the later or the date when additional feed is normally expected to become available or the end of the crop year.

(2) For fish for food, the period beginning and ending on the dates determined as follows: The period shall begin on the later of:

(i) The date of the application for assistance; or

(ii) The authorization for implementation of the program and the period shall end on the earlier of:

(iii) The estimated date the owner intends to harvest the fish;

(iv) The anticipated date when water temperature in the pond is expected to be 54 degrees Fahrenheit or less;

(v) The end of the current feeding period established for other eligible livestock if other livestock are included on the application; or

(vi) The end of the emergency livestock feed program crop year.

*Fish for food* means those fish which are maintained for commercial sale to restaurants, food stores, fish haulers, and processors for human consumption.

*Foundation Livestock* means eligible livestock that are kept for breeding and the reproduction of such livestock.

*Goat doe* means a female animal kept for breeding that is pregnant or lactating.

*Handler* means any person approved by the county ASC committee to perform designated services in accordance with a grain handler agreement executed by such person and CCC.

*Husbander* means owner as defined in this subpart.

*Liquid supplemental feed* means that which contains protein, urea or other nonprotein nitrogen, minerals, and vitamins that are added to molasses or other liquids resulting in a product that is mixed, handled, and fed in a liquid form. They may also include such products as emulsifiers for fat, certain antibiotics, and hormones.

*Livestock producer* means the livestock owner as defined in this subpart.

*Natural disaster* means disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster.

*Net Energy Maintenance* means for all livestock, except fish for food, 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. The maintenance level for fish for food shall be one percent of the average weight of all fish for food owned by the owner times the number of days in the feeding period.

*Normal yield* means for program crops the yield established for other CCC programs. If no yield is established for programs crops, the yield shall be based on similar farms. For nonprogram crops, the yield shall be the lower of the yield specified by the owner or the average yield for the county determined according to NASS, unless the owner can substantiate that his or her normal yield is higher than that of NASS. Yields determined by NASS shall be based on a 5-year average excluding the high and low years.

*Owner* means: (1) A person who is actively engaged in farming as determined according to part 1497 of this chapter, and is:

(i) A citizen of, or legal resident alien in the United States; or

(ii) 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;

(iii) Determined to receive 10 percent or more of the person's gross income, as determined by the Secretary, from the production of grain or livestock.

(2) A person that is actively engaged in livestock production or husbandry, or dairy production, and is:

(i) Any Indian tribe under the Indian Self-Determination and Education Assistance Act;

(ii) Any Indian organization or entity chartered under the Indian Reorganization Act or entity chartered under the Indian Reorganization Act;

(iii) Any tribal organization under the Indian Self-Determination and Education Assistance Act; and

(iv) Any economic enterprise under the Indian Financing Act of 1974.

The owner must own or jointly own the eligible livestock to be fed with the eligible feed which is to be purchased or acquired through donation in accordance with this part or with respect to which assistance is provided in accordance with this part. An owner who pledges livestock as security for a loan shall be considered as the owner for the purpose of this part if all other requirements of this part are met. Notwithstanding any other provisions of this section, livestock leased under a contractual agreement which has been in effect at least 3 months for poultry or fish and 6 months for other livestock on the date of application for assistance under this part requires the lessee to furnish the feed for such livestock and provides for a beneficial interest in such livestock such as the right to market a share of the increase shall be considered as being owned by the lessee. An owner does not include:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity which is determined to be ineligible to receive payments or benefits in accordance with part 1498 of this chapter.

*Owner's holdings* means all land and livestock located within a reasonable travel area, as determined by the county committee, for the owner. Owner's holdings shall also include all land and livestock that is not within a reasonable travel area, if crops and or livestock from such land are normally transported from one operation to the other operation to allow the owner to utilize all feed and grazing available on all operations.

*Person* means a person as determined according to part 1497 of this title.

*Posted county price* or (*PCP*) means the daily terminal market price for a commodity at a terminal market as determined by CCC, adjusted by the county average location differential as determined by CCC.

*Poultry* means domesticated chickens, ducks, geese and turkeys.

*Premix* means a formulation of one or more microingredients, such as vitamins, minerals, drugs, or other ingredients when one type of ingredient is evenly mixed with one or more of other types of ingredients or with a carrier. One vitamin mixed together solely

with another kind of vitamin, or one mineral mixed together solely with another kind of mineral is not considered a premix.

*Processed feed* means feed grain which contains not more than 90 percent, by weight, of any one feed grain which is ground, rolled, steamed, pelletized, or otherwise processed provided that all of the ingredients of the whole grain are included in such mixture.

*Program* means emergency livestock feed program authorized by this part.

*Secretary* means the Secretary of Agriculture or a designee of the Secretary.

*Sheep ewe* means a female animal kept for breeding that is pregnant or lactating.

*State* means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

*State committee, State office, county committee, or county office,* means the respective ASC committee or FSA office.

*Substantial loss of production* means the monetary value of feed produced by the owner (including pasture, forage and feed in storage) during the crop year which has, because of a natural disaster, suffered at least a 40 percent reduction in the yield from normal production computed by the county office, or such other amount as determined by the Executive Vice President, CCC, to be the normal production produced by the owner with respect to lands operated by the owner. Any loss of feed production which the approving official determines is attributable to:

(1) Overgrazing; or

(2) Farming practices not recognized as being normal in the area, shall not be included in determining a substantial loss of production. Loss of feed production on crop land leased by the owner, under a new lease, after the beginning of the emergency livestock feed program crop year shall not be included in determining a substantial loss of production. Loss of feed production on pasture land leased by the owner, under a new lease, less than 90 days before the authorization to implement the emergency livestock feed programs shall not be included in determining a substantial loss of production, unless otherwise allowed by CCC. The increase in costs of livestock feed because of a natural disaster or any other reason shall not be construed to mean that the owner has had a loss of production.

*Swine sow* means a female animal kept for breeding that is pregnant or lactating.

*Total benefits available* means the total monetary value of assistance for which an owner is eligible as originally computed and entered on the contract. Total benefits available is a percentage of the lesser of the value of feed production loss or the value of additional feed needs.

*Value of additional feed needs* means the monetary value needed to provide the daily energy requirements for the entire feeding period for the eligible livestock after subtracting the monetary value of feed available to the owner.

*Value of total feed needs* means, except fish for food, the total monetary value needed to provide daily energy requirements for eligible livestock for the entire feeding period. Feed benefits for fish for food shall be as provided in § 1439.6 of this subpart.

*Warehouse* means a warehouse which is currently operating in accordance with a valid Uniform Grain Storage Agreement executed with CCC.

*Weight ranges* means the weight range by type of livestock and an appropriate amount of energy required to provide the daily maintenance needs for livestock as follows:

| Kind/type | Weight range | Daily energy requirement | Allowance/day in lbs. of corn |
|---|---|---|---|
| (1) Beef cattle: Mcals | | | |
| Beef | Less than 400 | 3.0 $NE_m$ | 3.5 |
| Beef | 400–799 | 5.2 $NE_m$ | 6.5 |
| Beef | 800–1099 | 7.0 $NE_m$ | 8.5 |
| Beef | 1100+ | 10.8 $NE_m$ | 12.5 |
| Beef, cow | All | 13.6 $NE_m$ | 15.7 |
| Beef, bull | 1000+ | 10.8 $NE_m$ | 13.0 |

| Kind/type | Weight range | Daily energy requirement | Allowance/day in lbs. of corn |
|---|---|---|---|
| (2) Dairy cattle: | | | |
| Dairy | Less than 400 | 3.0 $NE_m$ | 3.5 |
| Dairy | 400–799 | 5.2 $NE_m$ | 6.5 |
| Dairy | 800–1099 | 7.0 $NE_m$ | 8.5 |
| Dairy | 1100+ | 10.8 $NE_m$ | 12.5 |
| Dairy, cow | Less than 1100 | 20.4 $NE_1$ | 27.0 |
| Dairy, cow | 1100–1299 | 23.0 $NE_1$ | 31.0 |
| Dairy, cow | 1300–1499 | 24.5 $NE_1$ | 33.0 |
| Dairy, cow | 1500+ | 25.7 $NE_1$ | 34.5 |
| Dairy, bull | 1000+ | 12.0 $NE_m$ | 14.5 |
| (3) Equine: | | | |
| Equine | Less than 450 | 6.2 DE | 4.4 |
| Equine | 450–649 | 8.9 DE | 6.3 |
| Equine | 650–874 | 11.6 DE | 8.2 |
| Equine | 875+ | 17.3 DE | 11.6 |
| (4) Swine: Kcals | | | |
| Swine | Less than 45 | 780 DE | .5 |
| Swine | 45–124 | 1630 DE | 1.1 |
| Swine | 125+ | 2867 DE | 1.9 |
| Swine, sow | 235+ | 9854 DE | 6.5 |
| Swine, boar | 235+ | 5446 DE | 3.7 |
| (5) Sheep: | | | |
| Sheep | Less than 44 | 315 $NE_m$ | .4 |
| Sheep | 44–82 | 718 $NE_m$ | .9 |
| Sheep | 83+ | 973 $NE_m$ | 1.1 |
| Sheep, ewe | 150+ | 1420 $NE_m$ | 3.1 |
| Sheep, ram | 150+ | 1556 $NE_m$ | 1.7 |
| (6) Goats: Mcals | | | |
| Goats | Less than 44 | .70 $DE_m$ | .5 |
| Goats | 44–82 | 1.59 $DE_m$ | 1.1 |
| Goats | 83+ | 2.16 $DE_m$ | 1.5 |
| Goats, doe | 125+ | 5.3 $DE_m$ | 3.5 |
| Goats, doe, dairy 1994 and subsequent crop years | 125+ | 7.6 $DE_m$ | 5.2 |
| Goats, buck | 125+ | 3.01 $DE_m$ | 2.1 |
| (7) Poultry: Kcals | | | |
| Poultry | Less than 3.0 | 150 ME | .1 |
| Poultry | 3.0–7.9 | 375 ME | .2 |
| Poultry | 8.0+ | 638 ME | .45 |

Consideration has been given for fetal development, lactation, as applicable, in meeting daily energy requirements for maintenance. Weight ranges and energy requirements shall not be established for fish used for commercial food production but a feed allowance shall be computed in accordance with § 1439.6 of this subpart.

[56 FR 33192, July 19, 1991, as amended at 58 FR 62512, Nov. 29, 1993]

### § 1439.4 Program availability.

(a) Whenever the Governor of a State determines that a livestock feed emergency due to a natural disaster exists in a State, or an area of the State, or a county committee determines that such an emergency exists in the county or area within the county, the Governor or the county committee may submit a request for a determination by the Secretary of a livestock feed emergency in the State, county, or area thereof and for emergency livestock feed assistance under this part. Any request for a determination that a livestock emergency exists because of a slow developing natural disaster such as a drought must be submitted by October 31 of the current crop year. A determination that a livestock emergency due to natural disaster exists may also be made for a State, county or area thereof by the Secretary, whether or not a request for assistance is submitted. The request of a Governor or county committee for a livestock feed emergency determination and for emergency livestock feed assistance shall include recommendations to the Secretary of those options that will fully use feed available through local sources. The request of the Governor must specify the names of the counties for which assistance is requested. The request submitted by a

county committee for a livestock feed emergency determination must be submitted to the State committee and must contain:

(1) A County Feed Loss Assessment Report, Form CCC–654;

(2) The rainfall data by month expressed in inches and percent of normal for the current calendar year and the two previous calendar years if the request is due to the occurrence of drought or excess moisture;

(3) The type of assistance requested; and

(4) A report of an on-site visit by the county committee and a State committee representative stating existing production conditions.

(b) The State committee shall forward such a request with a recommendation of whether the request should be approved to DASCO.

(c) The Executive Vice President, CCC, or his designee shall make a final determination as to whether a livestock feed emergency exists not later than 30 days after receipt of any request made in accordance with paragraph (a) of this section and shall notify the Governor or the county committee of such determination as applicable and the livestock feed programs authorized to be implemented.

(d) Owners in any county contiguous to a county that has been designated as a livestock feed emergency county shall be eligible to receive emergency livestock feed assistance under this part, except for the Crash Feed Grain Donation Program and Livestock Feed Donation Program, at any time during the 8-month period beginning on the date on which the emergency was determined exists in the other county.

### § 1439.5 Owner eligibility.

Subject to the terms and conditions in this part, an owner, including an Indian tribal member owner who is participating in the Indian Acute Distress Donation Program (IADDP), may be approved to participate in a program established in accordance with this part.

### § 1439.6 Eligibility for assistance.

(a) Any owner of livestock may file a CCC–652 for participation in a program made available by CCC in an approved county. When a CCC–652 is filed, the owner or, a duly authorized representative of the owner, shall execute the certification contained on the CCC–652.

(b) The owner, or duly authorized representative of the owner, shall enter into a contract with CCC to receive assistance not to exceed the amount of eligibility determined on the CCC–653.

(c) A CCC–652 application worksheet and CCC–651 contract must be filed at the county FSA office in an approved county or in a county FSA office in a contiguous county.

(d)(1) The owner, or a duly authorized representative of an owner, shall:

(i) Furnish all the information specified on the CCC–652 and CCC–651;

(ii) Certify that the owner meets the requirements of the applicable program; and

(iii) Provide any other information which the approving official determines to be necessary to determine the owner's eligibility.

(2) Applications for assistance due to production losses because of a livestock feed emergency determined to exist for 1990 and subsequent livestock feed crop year disasters must be filed by December 31 of the year in which the disaster occurred.

(3) With respect to owners in a county contiguous to a county where a livestock feed emergency has been determined to exist, owners must file not later than the last day of the 8-month period beginning on the day the Secretary of Agriculture determines that a livestock feed emergency exists in the other county.

(e)(1) With respect to those programs which require that an eligible livestock owner must have suffered a substantial loss of production of feed, in determining whether a substantial loss of production of feed exists, the normal production of livestock feed and the current year livestock feed production harvested by the owner shall be converted to a monetary value based on established crop yields or the 5-year average yield of the crop excluding the high and low years, obtained from the National Agriculture Statistics Service (NASS). The amount of loss of livestock feed production shall be determined by CCC by comparing the monetary value of normal feed production

produced on the owner's landholdings including leased land and any other land which is available for use by the owner to the monetary value of the actual livestock feed production harvested from such holdings. Loss of pasture production shall be based on the grazing value per acre of such pasture and the percent of loss for such acres. The owner must have suffered a substantial monetary value loss of feed normally produced by the owner to be eligible to participate in the emergency livestock feed programs.

(2) A substantial loss of production may, as determined by CCC, include feed stocks produced in the current crop year which were damaged or destroyed by a natural disaster while in storage. Feed stocks not totally destroyed shall be appraised by CCC on the basis of the remaining value of such stocks as livestock feed.

(3) For the 1990 emergency livestock feed program the determination of a substantial loss of production with respect to pasture, range, or other grazing land shall be computed based on the loss of current year grazing after the beginning of the livestock feed program crop year through the end of the feeding period. County ASC committees shall establish a value per acre for each type of grazing for the county and the maximum degree of loss for each type of grazing. Any production loss attributed to overgrazing in a prior crop year shall be excluded.

(4) For the 1991 and subsequent emergency livestock feed program crop years, the determination of a substantial loss of production with respect to pasture, range, or other grazing land shall be computed based on the loss of current year grazing after the beginning of the livestock feed program crop year through the end of the feeding period. State ASC committees shall establish a carrying capacity for each type of grazing in the county. The normal grazing value will be based on the carrying capacity and the dollar value of the quantity of forage needed to maintain an animal unit for 1 day, as determined by DASCO.

(5) In determining a substantial loss of production with respect to feed grain, silage, green chop, hay, and other roughage, the current crop year acreage and normal yields for such crops shall be used. The owner with swine, poultry or fish and grazing livestock that selects to include only eligible livestock that do not normally graze or use forage in the application for assistance shall not receive a loss on roughage, grazing, or other crops not suitable for non-grazing livestock.

(6) The amount of payment on any loss of production otherwise computed shall be reduced due to the receipt of other government disaster benefits which are received by the person for livestock feed normally grown by the owner. No reduction shall be made for CCC-owned grain that is donated to eligible Indian livestock owners under the Indian Acute Distress Donation Program (IADDP).

(7) No loss of production shall be determined on acreage conservation reserve (ACR) or conserving use (CU) for payment acreage during the 5-month restricted haying and grazing period established by the State committee for purpose of administering part 1413 of this chapter.

(f) The same monetary value per ton, bushel or hundredweight, as applicable, used to determine the value for normal production and feed production harvested shall be used to determine a monetary value for feed available.

(g) Current year feed available owned by the owner of eligible livestock on the date of application shall include, but is not limited to:

(1) Feed grain, silage, green chop, hay, pasture, and other roughage;

(2) Current crop year production of feed still available including any grain pledged as collateral for a CCC price support loan;

(3) Current crop year feed grain pledged as collateral for a CCC price support loan during the current crop year.

(4) Any current crop year feed that is sold during the current crop year by considering the date of delivery of the feed as the date sold;

(5) Pasture, range, or other grazing land owned by the owner and any benefits from any pasture or grazing rights purchased or leased as part of the owner's normal operation during the feeding period;

(6) Grazing benefits from hay or grain crops which are grazed instead of or in addition to harvesting during the feeding period, including any temporary grazing of crops such as wheat;

(7) Temporary winter cover crops available for grazing during the feeding period;

(8) Any current year feed produced by the owner utilized in a feedlot for the commercial feeding of livestock;

(9) Any donated feed received during the current year including current and prior years production, that is still available on the date the application is filed except for feed grain donated by CCC under the IADDP;

(10) Any roughage or grazing value available during the feeding period from ACR or CU during the 7-month nonrestricted haying and grazing period established by the State committee for purposes of administering part 1413 of this chapter;

(11) If haying or grazing of ACR or CU for payment acreage during the 5-month restricted period is authorized, any roughage or grazing value available from these acreages during the feeding period; and

(12) Except as otherwise provided in this section, any other feed that may be determined by approving officials in accordance with instructions issued by DASCO including adjustments based upon other government disaster benefits which are received by the person.

(h) The total monetary value of feed available, for an Indian tribal member who is determined eligible to receive assistance under the emergency livestock feed programs and receive donated grain under the IADDP, shall be the monetary value of the Indian owner's current year livestock feed available as determined in paragraphs (g) (1) through (12) of this section, less the monetary value, as determined by DASCO, of any donated grain received under IADDP.

(i)(1)(i) The value of total feed needs determined with respect to an owner of livestock, other than fish for food, shall not exceed the amount obtained by multiplying:

(A) The average cost of corn, as established by CCC, that is determined necessary to provide the energy requirements established for each weight class of livestock by type; times

(B) The number of eligible animals of each type and weight range of livestock; times

(C) The number of days in the feeding period.

(ii) The livestock owner with swine, poultry or fish and grazing livestock shall have the option to include only eligible livestock that do not normally graze or use forage in the application for assistance under this part.

(iii) The value of additional feed needs determined with respect to an owner shall be the monetary value of the total feed needs less the monetary value of feed available including feed grain, hay, silage, pasture and range, and any other source of feed, determined by the approving official to be available to the owner for feeding eligible livestock during the feeding period.

(iv) The amount of total benefits available determined with respect to an owner for the entire feeding period shall be a percentage, as determined by DASCO, of the smaller of the monetary value of additional feed needs or the monetary value of feed production loss by the owner.

(2) The value of feed needs determined with respect to an owner of fish for food shall not exceed the average pounds of fish owned by the owner times the number of days in the feeding period times one percent times the cost of feed as determined by DASCO. The average weight of the fish shall be determined by:

(i) Determining the estimated average weight of the fish at the time of application;

(ii) Determining the estimated average weight of the fish on the ending date of the feeding period; and

(iii) Dividing the sum of (i) and (ii) by 2.

(j)(1) The county committee or designee shall review each CCC–652 and CCC–651. The county committee and, if designated by the county committee, the County Executive Director, is authorized to approve or disapprove all CCC–653's and CCC–651's. Each CCC–653 or CCC–651 for a county committee member, or an FSA employee, shall be reviewed by the State committee after

approval by county ASC committee or its designee.

(2) Each CCC–653 or CCC–651 for a State committee member or State Executive Director shall be reviewed by DASCO after approval by the county committee or its designee.

(3) No application or contract shall be approved unless the owner meets all eligibility requirements. Information furnished by the owner and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application and contract shall be denied until sufficient additional information is provided by the owner. The owner shall be notified of the reason for denial and provided an opportunity to submit additional information as requested.

(4) An owner shall be notified in writing of the action taken with respect to a CCC–652 and CCC–651 by the approving official.

[56 FR 33192, July 19, 1991, as amended at 58 FR 62512, Nov. 29, 1993]

### § 1439.7 Adjustment of total benefits available.

(a)(1) The determination of the total benefits available to the owner may be decreased or increased after a determination has been made. The contact person shall notify all other owners which are a party to the CCC–652 and CCC–651 of all changes regarding the application and contract.

(2) If there is an increase or a reduction in the number of the owner's eligible livestock, this fact shall be promptly reported to the approving official. If necessary an adjustment in the owner's additional feed needs and an adjustment in the benefits issued to the owner shall be made. This increase or reduction shall be made by revising the benefits available on the CCC–653 and CCC–651 by the result of multiplying the amount of the change in eligible animals, times the number of days remaining in the feeding period times the cost per day to provide energy requirements for the applicable weight range by type of eligible livestock. After adjusting the benefits available, if applicable, the county office shall notify the contact person of the current total benefits available.

(3) If, due to a change in total benefits available, an excess amount of assistance was provided to the owner, the owner must refund such excess including applicable interest as determined by DASCO.

(b) If additional feed, including pasture, becomes available to the owner from production on any land included in the owner's holdings covered by the contract during a feeding period, this fact shall be promptly reported to the county office and proper adjustments shall be made.

(c) If any decrease in feed production, including pasture, occurs on any land included in the owner's holdings covered by the contract during a feeding period, this fact shall be promptly reported to the county office and proper adjustments shall be made.

### § 1439.8 Disposition of feed.

(a) (1) Feed grain or other livestock feed obtained under this part shall not be exchanged for any ingredients, services, cash, credit, or any other thing of value.

(2) An owner may feed eligible livestock feed to any livestock owned or leased, after a determination has been made that the owner's eligible livestock were the only livestock used in determining the owner's total benefits available.

(b) The total quantity of feed purchased in accordance with this part, for which CCC has provided assistance under contract with the owner, must be fed to the owner's livestock within the feeding period. The county committee may consider livestock feed as having been fed within the feeding period if the county committee determines that failure to timely feed the livestock feed was due to conditions beyond the control of the owner. The amount of livestock feed remaining which may be considered as being timely fed shall not exceed a 10-day supply of feed for the owner's eligible livestock.

(c)(1) If the owner does not feed the feed grain or other livestock feed as provided in paragraphs (a) and (b) of this section, with respect to the unfed amount the owner shall pay to CCC the following amounts plus any applicable interest, as determined by CCC:

(i) With respect to purchased CCC-owned feed grain, the difference between the price paid for such feed grain and the Posted County Price (PCP) used to determine the dollar amount paid by the owner thereof, or such other value as determined by CCC, based on the price of such feed grain in the county where the feed grain was stored; and

(ii) With respect to cost-share assistance, the amount of assistance received; and

(iii) With respect to CCC-owned feed grain donated to the owner, the rate equal to the PCP of the feed grain in the county where the grain was stored, on the date the feed grain was made available to the livestock owner.

(2) If the owner has failed to report a change in the livestock operation of the owner as required by this subpart and excess assistance was provided to the owner, the owner shall pay to CCC the following amounts plus any applicable interest, as determined by CCC:

(i) With respect to purchased CCC-owned feed grain, the difference determined under paragraph (c)(1)(i) of this section for any benefits received by the owner under the terms of the contract for the purchase of such feed grains which was purchased in excess of the quantity that CCC would have approved on the contract and made available, if such report had been made.

(ii) With respect to cost-share assistance, the amount of cost-share assistance which was received under the terms of the contract, as determined by CCC, based on the amount in excess of the amount that CCC would have approved on the contract if such report had been made.

(iii) With respect to CCC-owned feed grain donated to the owner, the rate equal to the PCP of the feed grain in the county where the grain was stored, on the date the feed grain was made available to the livestock owner.

**§1439.9 Payments.**

(a) The total amount of payments which are made by CCC to all persons under the contract shall be the amount equal to the total benefits available to all persons which comprise the contracting entity. Such amount shall be paid by CCC only if it has been determined that the persons are eligible to receive such benefits according to the terms and conditions of the regulations and the contract. The county office shall provide a percentage of the total amount of benefit due upon approval of the owner's application for benefits and acceptance of the contract as determined by DASCO. The remainder of the total amount of benefits due if any will be made after the owner has shown that the terms and conditions of the contract have been met. If any terms, conditions, or requirements of the regulations and the contract are not met, payments and benefits previously provided by CCC which were not earned under the provisions of the contract shall be refunded.

(b) At any time during the period of the contract, the owner shall, as requested by the county committee, submit to the county office, receipts and sales documents that are required verifying that the owner purchased the necessary feed to feed the livestock under the terms and conditions of the contract.

(c) Any receipts or sales documents that may be required of the owner by CCC showing that the terms of the contract have been met must be submitted by the owner by not later than the tenth working day after the end of the feeding period on the contract or addendum.

(d) Each person's share of the total contract payment shall be indicated on the contract, and each person shall receive benefits or final payment from CCC according to benefits or payments earned under the provisions of the contract.

(e) The owners who file applications for more than one feeding period relating to a crop year shall execute a contract for each subsequent feeding period for which the owner is eligible. CCC shall provide assistance equal to the amount of benefits determined for the owner for the feeding periods that

the owner is eligible to receive benefits.

(f) The failure of any contact person to file the necessary receipts or sales documents showing that the terms and conditions of this part and the contract have been met shall render all of the persons ineligible for any payments and benefits under the contract including any payments previously made. Payments made shall be refunded to CCC with interest, if applicable, as determined under § 1439.17 of this subpart.

(g) Any payments or benefits, as determined under § 1439.17 of this subpart, and interest if applicable, made to participating owners for benefits on each feeding period shall be refunded to CCC if the owner does not submit receipts or sales documents to CCC for purchases of feed not later than the tenth working day after the end of each feeding period on the contract.

(h) The failure of a livestock owner to comply with regulations and contract terms regarding changes that may affect the owner's eligibility shall be a violation of the program and shall render the owner ineligible to receive program benefits. However, in the event the provisions of part 791 of this title are applicable to a specific violation, the owner may receive benefits under the program, reduced as follows:

(1) For the owner's first such violation, total benefits available to the owner shall be reduced by an amount equal to 5 percent of the owner's current total benefits available as specified on the latest CCC–651–B or CCC–651, as applicable.

(2) For the owner's second such violation, total benefits available to the owner shall be reduced by an amount equal to 25 percent of the owner's current total benefits available as specified on the latest CCC–651–B or CCC–651, as applicable.

(3) For the owner's third such violation, total benefits available to the owner shall be reduced by an amount equal to 50 percent of the owner's current total benefits available as specified on the latest CCC–651–B or CCC–651, as applicable.

(4) For the owner's fourth such violation, the owner shall be ineligible to receive any benefits under the emergency livestock feed programs and shall be required to refund any benefits or payments already received, plus any applicable interest as determined by CCC.

### § 1439.10 Termination and suspension of program.

(a) The county committee, in the county that requested emergency livestock feed program assistance, may at any time during the operation of a program recommend suspension or termination of a program. The State committee may at any time during the operation of a program suspend or terminate a program, with the concurrence of DASCO, for the county that requested emergency livestock feed program assistance. DASCO may suspend or terminate a program at any time for the county that requested the emergency livestock feed programs. The suspension or termination of a program in a county shall not apply to any application filed prior to the effective date of the suspension or termination of a program. Owners who filed an initial application prior to the termination of the program shall be eligible to file subsequent applications and contracts.

(b) Emergency livestock feed program assistance in a county contiguous to a county that requested and was determined eligible to receive livestock program assistance shall not be suspended or terminated.

[56 FR 33192, July 19, 1991, as amended at 58 FR 62513, Nov. 29, 1993]

### § 1439.11 Maintenance of books and records.

Warehouseman, handlers, dealers, and owners shall maintain and retain financial books and records which 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. 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. The owner shall, within 30 days after a request by the county committee, submit any requested information

with respect to the owner's livestock feeding operation.

### § 1439.12 Liens and claims of creditors; setoffs.

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. The regulations governing set-offs and withholdings found at part 1403 of this chapter shall be applicable to this part.

### § 1439.13 Assignments of payments.

Payments which are earned by a person under the emergency livestock feed programs may be assigned in accordance with the provisions of 7 CFR part 1404.

### § 1439.14 Limitation of authority.

No delegation herein to a State or county committee or a commodity office shall preclude the Executive Vice President, CCC, 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 or employee of the Department of Agriculture.

### § 1439.15 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 part 780 of this chapter.

### § 1439.16 Misrepresentation, scheme or device.

A person who is determined by the State committee or the county committee to have:

(a) Adopted any scheme or other device which tends to defeat the purpose of this program;

(b) Made any fraudulent representation; or

(c) Misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program with respect to the crop year involved.

### § 1439.17 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 arising under the contract, or this part, and if any refund of a payment to CCC shall otherwise become due in connection with the contract, or this part, all payments made under this part to any person 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 in the contracting entity shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under the terms and conditions of the contract or this part.

(c) Interest shall be applicable to refunds required of the owner 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 which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available of the monies or benefits to be refunded. 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 owner.

(d) Interest determined in accordance with paragraph (c) of this section shall not be applicable to refunds required of the owner because of unintentional misaction on the part of the owner, 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) Persons who are a party to the emergency livestock feed program contract must refund to CCC any excess payments made by CCC with respect to such contract.

(g) In the event that the emergency livestock feed program contract was established as result of erroneous information provided by any owner to CCC, assistance available under the emergency livestock feed program contract shall be recomputed and any payments made or due under the contract shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputations of the contract shall be remitted with any applicable interest.

(h) Any refund of payments, which is determined to be required as a result of any violation of the provisions of the contract by the owner shall be remitted to CCC with any applicable interest.

[56 FR 33192, July 19, 1991, as amended at 58 FR 62513, Nov. 29, 1993]

### § 1439.18 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.

### § 1439.19 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 an owner 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.

### § 1439.20 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.

### § 1439.21 Violations.

(a) *Disposal of grain.* (1) If the owner has failed to utilize the entire quantity of livestock feed purchased under the terms and conditions of the application for assistance and contract of these programs, the owner shall not dispose of any remaining quantity of such livestock feed except as specified by CCC.

(2) Except as permitted by CCC, if feed acquired from CCC is made available to any other person, or if a delivery order is used for obtaining a type of grain other than that specified on the delivery order, the owner shall be subject to such civil penalties and to such criminal liabilities as are provided by applicable State and Federal statutes.

(b) *Fraudulent representations.* Any warehouseman, handler, dealer, or any other person may be suspended from participation in a program in accordance with part 1407 of this chapter if such person has:

(1) Made a false certification, representation or report in accordance with this subpart; or

(2) Otherwise failed to comply with any provisions of this part or any contracts entered into in accordance with this part. The making of such fraudulent representations shall make such person liable in accordance with applicable State and Federal criminal and civil statutes.

### § 1439.22 Benefits limitation.

The total amount of benefits that a person, as determined in accordance with part 1497 of this chapter, shall be entitled to receive under one or more of the programs established under this part, may not exceed $50,000 per livestock feed crop year for which payment is made or benefits received.

[58 FR 62513, Nov. 29, 1993]

### §1439.23 Gross revenue limitation.

A person, as defined in part 1497 of this chapter, as applicable, who has annual gross receipts in excess of $2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross receipts 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 receipts received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross receipts from farming and ranching, the total gross receipts from all sources.

### §1439.24 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 1439) have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0560–0029.

## Subpart—Livestock Preservation Donation Program

### §1439.101 General statement.

(a) This subpart sets forth the terms and conditions of the Livestock Preservation Donation Program. This program shall only be in effect upon a determination that a livestock feed emergency exists in a State, county or area and it has been announced that this program is in effect. Information regarding the availability of the program in a county may be obtained from State and county offices.

(b) In order to be eligible to participate in the program, an owner of livestock must have suffered a substantial loss of production of feed as defined in §1439.3 of this part. The objective of the program is to provide assistance approved by CCC through a contract with the owner, for the owner to receive donated CCC-owned feed grains, for livestock owners who are financially unable to purchase feed, or to otherwise participate in any other program authorized under this part. The owner must establish to the satisfaction of the approving official that:

(1) Without assistance the owner's livestock would perish or be sold at distress prices; and

(2) The owner has insufficient cash or credit to buy feed for eligible livestock.

### §1439.102 Eligibility.

(a) A livestock owner may be approved to participate in the program if it is determined that in addition to the provisions of §§1439.1 through 1439.24 that:

(1) The livestock owner's need for replacing and repairing losses of buildings, equipment, suppliers, and other related matters will leave insufficient cash or credit to buy feed for livestock;

(2) The livestock owner has insufficient cash or credit to buy feed for eligible livestock;

(3) The owner's livestock would perish or be sold at distress prices without donation of feed grains under this program;

(4) The livestock owner does not have sufficient livestock feed to feed the livestock through the period of the emergency; and

(5) The livestock owner is unable to participate in any other emergency livestock feed program which is currently in effect in accordance with this part.

(b) With respect to the determinations made in accordance with paragraphs (a)(2) through (4) of this section, the approving official must determine that under prevailing local conditions the owner's financial resources preclude the owner from obtaining sufficient quantities of feed from normal suppliers without:

(1) Imperiling continuance of the farming operations;

(2) Placing the owner in default with respect to existing financial obligations;

(3) Causing the owner to engage in unsound borrowing practices; or

(4) Resulting in excessive disposal of livestock by the owner.

(c) Purchased feed shall be considered as an available asset in determining whether an owner is suffering an undue financial hardship. In making this determination, the approving official shall take into consideration the normal financial resources of owners in

the area. If the owner meets the conditions as provided in § 1439.10 of this part, the resources of the owner and all of the related persons shall be taken into consideration in determining the eligibility of the owner to receive assistance.

**§ 1439.103 Assistance.**

(a) The livestock owner shall establish that the livestock owner's operation has been so damaged by the disaster that sufficient cash or credit does not exist which may be used to purchase necessary feed grain at present market prices. The owner shall not sell or dispose of in any way, except by feeding to the owner's livestock, CCC-donated feed grain. The owner shall reimburse CCC at a rate equal to the PCP of the feed grain in the county where the feed grain was stored, on the date the feed grain was made available to the livestock owner for any CCC-donated grain which is on hand after the end of the emergency period that exceeds a 10-day supply.

(b) CCC shall designate the kind of CCC-owned feed grain to be donated under this program and the delivery point at which such feed grain shall be made available. The delivery point may be in the eligible designated county, contiguous county, or any other location as designated by CCC. In those instances where feed grain is not available in the eligible designated county, or contiguous county, CCC may reimburse the livestock owner for the cost of transportation of the feed grain at a rate determined by DASCO.

(c) Transportation assistance will be provided to owners based on the smaller of the following:

(1) The loaded mileage from the delivery point where the feed grain is made available to the county line of the county in which the livestock owner is located; or

(2) When the owner delivers grain to a feed dealer for processing, the loaded mileage from the delivery point where the feed grain is made available to such feed dealer's facility.

(d) The maximum quantity of CCC-donated feed grain made available to an owner under this subpart shall be limited to the quantity determined by CCC in accordance with § 1439.6 of this part based on the cost of CCC-owned feed grain purchased in accordance with § 1439.202(h) of this part.

**§ 1439.104 Feeding period.**

The feeding period established under this subpart for owners shall be limited to the number of days determined by DASCO on a case-by-case basis.

## Subpart—Emergency Feed Assistance Program

**§ 1439.201 General statement.**

(a) This subpart sets forth the terms and conditions of the Emergency Feed Assistance Program. This program shall be in effect only upon a determination that a livestock feed emergency exists in a State, county or area and it has been announced that this program is in effect. Information regarding the availability of the program in a county may be obtained from State and county offices.

(b) In order to be eligible to participate in the program, an owner of livestock must have suffered a substantial loss of production of feed as defined in § 1439.3 of this part. The objective of the program is to provide livestock owners with the option to purchase a quantity of CCC-owned grain, not to exceed the owner's eligibility as stated on the contract at a reduced price. An owner who elects to purchase CCC-owned feed grain will have the monetary value on the application reduced by the result of multiplying the amount of CCC-owned grain purchased times an amount determined by DASCO.

**§ 1439.202 Sale of CCC-owned grain.**

(a) CCC shall designate the kind of CCC-owned feed grain to be sold under this program and the delivery point at which such feed grain may be made available. The delivery point may be in the eligible county, contiguous county, or any other locations as designated by CCC. In those instances where feed grain is not available in the eligible county or contiguous county, CCC may reimburse the owner for transportation on the smaller of:

(1) The loaded mileage from the delivery point where the feed grain is made available to the county line of

the county in which the livestock owner is located; or

(2) When the owner delivers grain to a feed dealer for processing, the loaded mileage from the delivery point where the feed grain is made available to such feed dealer's facility.

(b) Sales of CCC-owned grain may be made in a quantity which does not exceed the quantity determined by CCC in accordance with §1439.6 of this part based on a cost provided for in paragraph (h) of this subpart, which will permit feeding of grain to eligible livestock by the owner by the end of the feeding period.

(c) After payment is received by CCC, delivery shall be authorized by issuance of nontransferable delivery orders by CCC stating the kind and quantity of grain to be delivered and the expiration date in accordance with instructions issued by DASCO. Quantities authorized by delivery orders shall not exceed the quantity of grain determined in accordance with paragraph (b) of this section.

(d) The owner shall take physical delivery of the grain as soon as possible after issuance of the delivery order but not earlier than the date of such issuance and not later than a date determined by DASCO which would normally permit feeding of the grain as specified in paragraph (b) of this section. Title and risk of loss to the grain specified in the delivery order and stored at a warehouse or handler's facility shall pass to the owner when the owner accepts the grain and the owner and warehouseman certify on the delivery order. The owner shall promptly present the delivery order to the warehouseman or handler. CCC shall not be responsible for storage charges after the title passes to the owner but shall be responsible for handling charges at a rate not to exceed the rate provided in CCC's agreement with the warehouse or the handler. In cases where there is an underdelivery in quantity of the eligible grain, the owner shall not make settlement with the warehouse or handler but shall promptly notify the county office which issued the delivery order and a revised delivery order will be issued to the owner or a refund of the value of underdelivered feed grain will be made to the owner. Differences in quality between the grain accepted by the owner and the grain described in the loading order issued to the warehouseman or handler by CCC shall be settled between the warehouseman or handler and the owner.

(e)(1) Where CCC-owned feed grain is not available in an area in which an eligible county is located and there are no CCC-approved warehouses or handlers in such area, CCC may ship the required quantity of feed grain to the area and consign such grain to the county committee. Title and risk of loss shall pass to the owner upon delivery of the feed grain into the owner's conveyance or whenever the owner takes possession of the feed grain if such possession occurs prior to placing the feed grain in such conveyance.

(2) The sale price shall not be subject to adjustment for the grade and quality actually delivered into the owner's conveyance.

(3) The feed grain shall be weighed at destination if scales approved by CCC are available. If such scales are not available, settlement weights shall be as determined by CCC.

(4) CCC shall bear charges for transportation to the delivery point, for unloading the feed grain from the carrier's conveyance, for loading the feed grain into the owner's conveyance, and for determining the weight of the feed grain.

(f)(1) An owner may elect to receive eligible feed grain under the provisions of this subpart from feed grain stored on the livestock owner's farm if such grain has been pledged as collateral for a farm-stored CCC price support loan. Payment for such feed grain shall be made to CCC at the county office where the livestock feed programs application was filed. Feed grain acquired by the owner shall not be exchanged for any ingredient, service, cash, credit, or any other thing of value.

(2) An owner may elect to receive eligible feed grain under the provisions of this section through a feed dealer provided the owner executes a power of attorney as provided on Form ASCS–211, authorizing the feed dealer to execute the delivery order on behalf of the owner. Payment for feed grain shall be made to CCC at the county office where the application for feed grain is filed

when requesting the delivery order. Feed grain purchased by a feed dealer on behalf of the owner shall not be exchanged for any ingredient, service, cash, credit, or any other thing of value.

(3) The feed dealer shall provide such county office, in writing, the names of agents, such as company representatives, authorized to sign the delivery order on behalf of the feed dealer at the time of delivery of feed grain. The feed dealer shall:

(i) Take delivery of the feed grain before the expiration date of the delivery order;

(ii) Take physical delivery of the feed grain at each warehouse where the feed grain is located;

(iii) Not be reimbursed for transportation of feed grain received on behalf of the applicant; and

(iv) Present to such county office a statement signed by the owner and feed dealer certifying that the processed feed contained feed grain in the same quantity, type, and same or better grade as purchased by the owner.

(g) An owner who desires to have grain pelletized, ground, rolled, custom mixed, or otherwise processed may do so if the feed is processed from the feed grain purchased from CCC or the feed accepted from the processor is processed from the same kind of feed grain stated on the delivery order which grades the same or better as compared to such feed grain. The quantity of feed grain processed by the processor and delivered to the owner shall be the same quantity as the feed grain purchased from CCC, except for minor milling losses. CCC shall not be responsible for any charges involving processing, bagging, added freight incurred for processing in transit or any other cost which is incurred which would not have been incurred except for the processing of such feed grain.

(h) The sales price of eligible feed grain made available by CCC in response to any livestock feed emergency determined to exist shall be;

(1) For grain purchased from CCC-owned inventory, 50 percent of the PCP; and

(2) For grain purchased by the owner which had previously been pledged as collateral for such owner's farm-stored price support loan, 50 percent of the ajdusted CCC value as determined by CCC on the date the payment is received in the county in which the feed grain is stored.

(3) If no such PCP is established, the sales price shall be established at a comparable rate in accordance with instructions issued by DASCO.

(i) The quantity of feed grain delivered to an owner shall not exceed the total quantity approved for sale by CCC by more than 5 percent. Differences in quantity between the grain delivered to the owner and the quantity of grain described in the delivery order issued to the warehouseman or handler that was removed from the delivery point in excess of 105 percent shall be considered as open stocks and shall be settled between the livestock owner and the warehouseman or handler. Differences in quantity between the grain delivered to the livestock owner and the quantity of feed grain described in the delivery order issued to the warehouseman or handler between 100 and 105 percent shall be paid by the owner to CCC at 50 percent of the PCP determined by CCC for the commodity in the county in which the feed grain is stored.

(j) An amount equal to the purchase price times the quantity not delivered to the owner shall be refunded to the owner in those cases in which the total approved quantity shown on the delivery order and paid for by the owner is not delivered to the owner.

(k) When an owner desires to purchase feed grain pursuant to an approved application and contract, the owner must make a payment to CCC, in the manner specified in instructions issued by DASCO with respect to the quantity of grain to be purchased prior to issuance of a delivery order for such feed grain. The county committee may waive such prior payment requirement if a State or Federal agency certifies to CCC that such agency will finance part or all of the cost of the purchase. If such agency agrees to make payment directly to CCC as specified by the county committee, such a certification may be accepted by the county committee in lieu of cash to the extent of the amount so certified.

## Subpart—Emergency Feed Program

### §1439.301 General statement.

(a) This subpart sets forth the terms and conditions of the Emergency Feed Program. This program shall be in effect only upon a determination that a livestock feed emergency exists in a State, county or area, and it has been announced that this program is in effect. The objective of the program is to provide monetary assistance to eligible owners of livestock for the purchase of necessary feed. Information regarding the availability of the program in a county may be obtained from State and county offices.

(b) In order to be eligible to participate in the program, an owner of livestock must have suffered a substantial loss of production of feed as defined in §1439.3 of the part.

### §1439.302 Cost-share assistance.

(a) An owner of eligible livestock who has submitted an application for participation and a contract has been approved by a representative of CCC in accordance with §1439.1 through §1439.25 of this part shall receive monetary assistance for not more than 50 percent of the cost of eligible feed purchased by the owner not to exceed the monetary amount stated on the contract provided the owner presents evidence of the purchase of feed to the approving official at any time during the terms of the contract. If the approving official determines that the owner has met the conditions set forth in §1439.1 through §1439.25 of this part, assistance for the weight range by type of eligible livestock may be made available to the owner as provided in §1439.9 of this part.

(b) In no case may assistance be provided with respect to the value of purchased feed which is greater than the total benefits available determined in accordance with §1439.6 of this part.

(c) Acceptable evidence which may be presented to an approving official is limited to a sales document or receipt which:

(1) Is signed by the seller, unless the approving official waives such requirement; and

(2) Contains:

(i) The dates of purchase and delivery; and

(ii) The kind, price, and quantity of feed purchased.

(d) Eligible costs of feed purchases are limited to the purchase price paid by the owner at the point of delivery and may include as determined by the approving official:

(1) Costs normally associated with the preparation of mixed or processed feed;

(2) The cost of leasing or purchasing grazing rights for temporary pasture;

(3) The cost of leasing range or other grazing; and

(4) The cost of feed for eligible livestock in a feed lot.

## Subpart—Crash Feed Grain Donation Program

### §1439.401 General statement.

(a) This subpart sets forth the terms and conditions of the Crash Feed Grain Donation Program. This program shall be in effect upon a determination that a sudden livestock feed emergency in a State, county or area requires the implementation of the program. The objective of the program is to provide CCC-owned feed grains on a donation basis to livestock which are:

(1) Stranded;

(2) Unidentified by owner; and

(3) In danger of perishing after the occurrence of a sudden natural disaster.

(b) The Crash Feed Grain Donation Program is for use after a sudden major disaster has occurred and conditions are such that livestock cannot be tended to in a normal manner and would probably perish without the implementation of this program. Livestock owners who have their livestock under control and are capable of caring for them are not eligible to receive CCC-donated grain under this subpart.

### §1439.402 Assistance.

(a) Assistance is for eligible livestock which are commingled, stranded, and unidentified as to the livestock owner.

(b) The State committee, or its designee, shall determine the eligibility and the amount of assistance which shall be made available in the area for donation under this subpart.

(c) CCC-owned grain donated under this program shall not be sold or disposed of in any way except for feed for the livestock stranded and unidentified as to its owner.

(d) CCC shall designate the kind of CCC-owned grain to be donated under this program and the delivery point at which such grain shall be made available.

(e) The maximum amount of CCC-donated grain under this subpart shall be limited to the total quantity that the approving official determines is needed for the emergency period.

(f) Assistance shall include the cost of transporting the feed from the delivery point to the affected area.

### § 1439.403 Feeding period.

The feeding period established under this subpart shall not exceed the number of days established by DASCO on a case-by-case basis.

## Subpart—Prickly Pear Cactus Burning Program

### § 1439.501 General statement.

This subpart sets forth the terms and conditions of the Prickly Pear Cactus Burning Program. This program shall be in effect only upon a determination that a livestock feed emergency exists in a State, county or area and it has been announced that this program is in effect. Information regarding the availability of the program in a county may be obtained from State and county FSA offices. The objective of the program is to provide cost-share assistance not to exceed 50 percent of the cost of propane, butane, or kerosene used to burn the spines from prickly pear cactus to make it suitable for livestock feed.

### § 1439.502 Definitions.

*Butane* means either of two isomeric flammable gaseous paraffin hydrocarbons obtained from petroleum or natural gas and used for fuel.

*Kerosene* means a flammable hydrocarbon oil obtained by distillation of petroleum and used as a fuel.

*Propane* means a heavy flammable gaseous paraffin hydrocarbon found in crude petroleum and natural gas and used for fuel.

### § 1439.503 Eligibility.

A livestock owner may be approved to participate in the program if such owner:

(a) Is actively engaged in farming and/or ranching and receives 10 percent or more of total gross annual income from the production of grain or livestock;

(b) Does not have a qualifying gross revenue of more than $2,500,000;

(c) Has prickly pear cactus growing on such owner's holdings;

(d) Must have eligible livestock as defined in § 1439.3 of this part to consume the burned prickly pear cactus; and

(e) Must feed all of the burned prickly pear cactus to such owner's own livestock.

### § 1439.504 Assistance.

(a) The maximum amount of cost-share assistance under this program shall be limited to 50 percent or less of the cost of butane, kerosene, or propane used to burn the prickly pear not to exceed an amount as determined by DASCO.

(b) Prickly pear cactus made suitable for livestock feed shall not be considered as feed on hand in determining whether an owner is eligible to participate in this program or any other program implemented in accordance with this part.

(c) Feed obtained from burning prickly pear cactus for which assistance is obtained under this part shall only be used by the eligible owner to feed such owner's livestock.

# PART 1446—PEANUTS

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AUTHORITY: 7 U.S.C. 7271; 15 U.S.C. 714b and 714c.

SOURCE: 56 FR 16230, Apr. 19, 1991, unless otherwise noted.

## 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, 1402, 1403, 1407, 1421, 1422 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 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.

*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.

*DASCO.* The Deputy Administrator, State and County Operations, FSA.

*Dollar value.* An amount determined as follows:

(1) For inspected peanuts, the total of the amounts determined from each applicable form ASCS–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 ASCS–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 1498 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 ASCS–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 ASCS–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 ASCS–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 have visible Aspergillus flavus mold.

*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.

(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]

### § 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 ASCS–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 ASCS–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 ASCS–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 ASCS–1007's.* The handler shall maintain a copy of each form ASCS–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 ASCS–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 ASCS–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 ASCS–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 ASCS–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 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 to be used for the buyback, as evidenced by a contract balance of zero for that type 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 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]

## 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 ASCS–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 ASCS–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 22 of the Agricultural Adjustment Act of 1933, as amended, 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.

### §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 ASCS–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 ASCS–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 ASCS–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 ASCS–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, reconsideration and appeals.

(a) *Reduction of penalties.* (1) *By CCC Contracting Officer.* To the extent permitted by the provisions of paragraph (a)(4) 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 upon a request for reconsideration by the handler to whom the penalty is assessed.

(2) *By Director, National Appeals Division or by the Executive Vice President, CCC.* To the extent permitted by the provisions of paragraph (a)(4) of this section, the Director, National Appeals Division, upon an appeal by the handler to whom the penalty is assessed, or 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.

(3) *Reduction criteria.* A penalty that is determined or assessed in accordance with this part may be reduced by the CCC Contracting Officer or by the Director, National Appeals Division, or the Executive Vice President, CCC, or the Executive Vice President's designee, if such person determines that:

(i) The violation for which the penalty was assessed was minor or inadvertent;

(ii) A reduction in the amount of the penalty would not impair the effective operation of the peanut program; and

(iii) The assessment of penalty was not made for failure to export contract additional peanuts.

(4) *Reduction limits.* (i) If the reduction criteria in paragraph (a)(3) of this section has been met, the CCC Contracting Officer or the Director, National Appeals Division, 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.

(ii) If one of the criteria in paragraphs (a)(3)(i) and (ii) 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.

(iii) 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 Director, National Appeals Division or the Executive Vice President, CCC, or the Executive Vice President's designee.

(b) *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 for reconsideration or reduction must be made within 15 days after the date of the notice of assessment.

(c) *Appeal.* If handler is dissatisfied with the determination of the CCC Contracting Officer with respect to a request for reconsideration or reduction of a penalty that has been assessed against such handler, the handler may appeal such determination to the Director, National Appeals Division. Any

appeal of such determination of the CCC Contracting Officer must be submitted in writing to the Director, National Appeals Division, within 15 days after the date of notice of such determination by the CCC Contracting Officer. The appeal may be to contest liability for the penalty, to request that the penalty be reduced, or both. An appeal shall be conducted in accordance with the regulations set forth in part 780 of this title.

[57 FR 27145, June 18, 1992]

### §1446.705 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.

### §1446.706 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.

## 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 ASCS–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 ASCS–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 ASCS–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 ASCS–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 ASCS–1030 or other approved form to the State ASC 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 ASCS–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 ASCS–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.

### §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 1464—TOBACCO

## Subpart A—Tobacco Loan Program

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AUTHORITY: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C 714b, 714c.

## 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.
Maryland tobacco, type 32.
Cigar filler tobacco, type 41.
Cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55.
Puerto Rican tobacco, type 46.
Cigar binder tobacco, types 51 and 52.

(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 1x2x3 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]

### §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) With respect to Puerto Rican tobacco only, is tobacco which the producer has certified to the association as meeting the following requirements:

(1) 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.

(2) All tobacco delivered for price support has not been nested as defined in part 29 of this title.

(i) 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]

### § 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 1995 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 1995 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.

(f) The term for the application of the assessment provided for in this section shall be extended through the 1998 crops if the President issues a Presidential proclamation establishing a tariff-rate quota pursuant to Article XXVIII of the GATT 1947 or GATT 1994 with respect to tobacco. Accordingly, in the event that such a proclamation is issued all obligations which otherwise would terminate with the 1995 crop under this section shall apply equally for subsequent crops through the 1998 crops.

[56 FR 21259, May 8, 1991, as amended at 60 FR 19667, Apr. 20, 1995]

### § 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.

[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]

### § 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.

[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]

### § 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.

[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]

### § 1464.15 Dark air-cured (types 22–23) 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.

[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]

### § 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.

[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]

### § 1464.17 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.

[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]

### §1464.18 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.

[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]

### §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 5 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.

**§ 1464.102 Budget deficit marketing assessment.**

(a) *General.* The importer of any unmanufactured imported tobacco shall pay a budget deficit marketing assessment on each kilogram of such imported tobacco if such tobacco is imported during any of the 1994 through 1998 calendar years, except for separate lots of *de minimis* special entries.

(b) *Amount of assessment.* The budget deficit marketing assessment required by this section shall be the amount determined by multiplying the number of kilograms of imported tobacco by the sum, converted to per kilogram basis, of the marketing assessment imposed in accordance with § 1464.11 on purchasers of domestically produced burley tobacco and domestic flue-cured tobacco, respectively, for the marketing year for those domestic tobaccos during which the imported tobacco was imported.

(c) *Modification of the coverage and rate for imported tobacco.* (1) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the coverage, rates and obligations applicable to imported tobacco under this section shall be as provided in paragraph (d) of this section if:

(i) The President establishes a tariff-rate quota for tobacco; and

(ii) It is determined and announced by the Executive Vice President that a modification of the assessments is being made accordingly pursuant to Section 422 of Pub. L. 103–465.

(2) The effective date of the modification provided for in paragraph (c)(1) of this section shall be the date announced by the Executive Vice President consistent with the provisions of Pub. L. 103–465.

(3) (i) For entries of imported tobacco into the United States prior to the effective date for assessment modifications announced by the Executive Vice President under this paragraph, the rates and coverage of the assessment shall be as provided for in paragraphs (a) and (b) of this section.

(ii) For entries of imported tobacco into the United States after the effective date for assessment modifications announced by the Executive Vice President under this paragraph, the rates and coverage of the assessment shall be as provided for in paragraph (d) of this section.

(d) *Rates and coverage of the modified assessment.* If a modification of the assessments otherwise provided for in this section is announced by the Executive Vice President as provided for in paragraph (c) of this section then:

(1) Imports of tobacco under this section shall apply only to the same kind or tobacco having similar characteristics to a price-supported domestic kind, or considered in the trade to be the same or similar ''kind'', as a domestic tobacco which is, at the time the tobacco is entered into the commerce of the United States, currently subject to an assessment under § 1464.11.

(2) If the tobacco is subject to an assessment under paragraph (d)(1) of this section, then the assessment shall be paid by the importer and remitted to CCC. The amount due for each pound of subject tobacco, shall be the amount equal to 1% of the national price support level that applies for the current marketing year for the corresponding domestic kind of tobacco.

(3) It shall be the responsibility of all importers to establish that imported tobacco is not covered by the BDMA or not subject to a higher BDMA rate than that which is assessed or paid.

(4) In the case of the entry of mixed lots (containing tobacco of different kinds) the importer shall be required to certify to the composition of the lot. In the absence of such certification or in the absence of sufficient evidence to indicate the relevant kind of tobacco for purposes of administration of this section, then the importer shall be liable for the assessment as the highest possible relevant rate for all such tobacco.

(5) Importers of all tobacco, including those which are not subject to the

modified BDMA, shall maintain sufficient records to demonstrate compliance with the obligations of this section.

(6) Disputes involving the application of the assessment shall be resolved by the Director.

[59 FR 10944, Mar. 9, 1994, as amended at 60 FR 19667, Apr. 20, 1995]

### §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.* (1) Importer assessments shall be remitted within 10 workdays after the date on which the imported tobacco is entered.

(2) Notwithstanding the requirement in paragraph (b)(1) of this section, importer assessments remitted not later than April 10, 1994, for tobacco that is entered during the period January 1, 1994, through March 31, 1994, shall be considered to be timely remitted.

(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.

### §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 timely remit a budget deficit marketing assessment in accordance with the provisions of this subpart, such importer shall be subject to a marketing penalty, in addition to any budget deficit marketing assessment or other sum due and any late payment charges, at a rate equal to 37.5 percent of the sum of the per kilogram average market prices (calculated to the nearest whole cent) of domestic flue-cured and domestic burley tobacco for the respective domestic tobacco marketing year that ends during the calendar year immediately preceding the calendar year during which such imported tobacco was imported, on the quantity of tobacco as to which the failure occurs.

(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.

**§ 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 15 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.

## Appendix A to Part 1464—Importer Entry and Assessment Worksheet

**REPRODUCE LOCALLY.** Include form number and date on all reproducitons. *(See reverse for Privacy Act and Public Burden statements.)* 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 | | | | $ | $ |
| | | | | $ | $ |
| | | DRAFT | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | 14. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNTS REMITTED | | $ | $ |
| BURLEY | | | | $ | $ |
| | | | | $ | $ |
| | | DRAFT | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | | | $ | $ |
| | | 15. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNTS REMITTED | | $ | $ |
| OTHER | | | | $ | |
| | | | | $ | |
| | | DRAFT | | $ | |
| | | | | $ | |
| | | | | $ | |
| | | | | $ | |
| | | 16. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNT REMITTED | | $ | |

**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 1467—WETLANDS RESERVE PROGRAM

Sec.
1467.1 Applicability.
1467.2 Administration.
1467.3 Definitions.
1467.4 Program requirements.
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1467.6 Establishing priority for enrollment of properties in WRP.
1467.7 Enrollment of easements
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1467.10 Easement participation requirements.
1467.11 The WRPO development.
1467.12 Modifications.
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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—WOOL AND MOHAIR

AUTHORITY: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

### § 1468.1 Termination.

The price support program for wool and mohair was terminated at the conclusion of the 1995 marketing year. The regulations setting forth the applicable terms and conditions for the Wool and

Mohair Program for the 1995 and prior marketing years found at part 1468 of this title as of January 1, 1996, shall be applicable to determinations made with respect to the administration of payments outstanding on or after July 18, 1996.

[61 FR 37625, July 18, 1996]

## PART 1477—DISASTER PAYMENT PROGRAM FOR 1990 AND SUBSEQUENT CROPS

Sec.

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1477.20 Special 1992 crop corn quality adjustment.
1477.21 Adjustments to crop production.
1477.22 1993, 1994, and 1995 crop losses due to Hurricanes Andrew and Iniki and Typhoon Omar.
1477.23 1993 losses of trees, shrubs, or nursery stock and inventory.
1477.24 1995 and 1996 orchard crop losses.
1477.26 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 15 U.S.C. 714b and 714c; Pub. L. 101–624; Pub. L. 102–229, 105 Stat. 1701; Pub. L. 102–368, 106 Stat. 117; Pub. L. 103–50, 107 Stat. 241; and Pub. L. 103–75; 107 Stat. 739.

SOURCE: 57 FR 10963, Mar. 31, 1992, unless otherwise noted.

### §1477.1 General statement.

This part implements a Disaster Payment Program for the 1990 through 1994 crop years. The purpose of the program is to make disaster payments available to eligible producers on a farm that has suffered a loss of production or quality of 1990, 1991, or 1992 crops, not to exceed 2 different crop years, and of 1993 and 1994 crops due to damaging weather, to make payments for 1993, 1994, and 1995 crop losses due to Hurricanes Andrew and Iniki and Typhoon Omar for nursery crops, aquaculture, and tree crops including papaya, and make payments on 1993 losses of trees, shrubs, or nursery stock affected by disaster in 1993 that would have been sold in either 1993, 1994 or 1995, or related condition affecting the crop year for the crop for which a disaster application is made. This rule provides for 1994 crop losses from natural disasters including acquaculture, except ornamental fish, and provides payments to producers for 1995 through 1996 orchard crop losses due to freezing if the loss occurred between January 1, 1994, and March 31, 1994.

[60 FR 52610, Oct. 10, 1995]

### §1477.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out in the field by State and county FSA committees.

(b) State and county FSA committees and representatives and employees thereof do not have the authority to modify or waive any of the provisions of this part as amended or supplemented.

(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 which is not in accordance with this part; or

(2) Require a county FSA committee to withhold taking any action which is not in accordance with this part.

(d) CCC shall determine all yields and prices determined under this part and may utilize any agency of the USDA in making such determinations. To the extent practicable, CCC will use data provided by the National Agricultural Statistical Service (NASS) and the FSA. Any reference in this part to

NASS shall not restrict CCC from using data from other sources.

(e) No delegation herein to a State or county FSA 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 Farm Service Agency committee.

[60 FR 52610, Oct. 10, 1995]

### § 1477.3 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing the reconstitution of farms in part 719 of this title and in the regulations applicable to the production adjustment programs for feed grains, rice, upland and extra long staple cotton, wheat, and related programs set forth in part 1413 of this chapter.

*Actual production* means the quantity of the crop actually 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. In the case of sugarcane, the quantity of sugar produced from such crop shall exclude acreage harvested for seed. For the crops listed below, an appraisal will be required on any unharvested production. If a producer has any harvested production of the crop, the de minimis yield is not applicable. The appraisal must show that the yield would be equal to or less than the de minimis yield for the de minimis yield provision to apply. If an eligible producer has appraised production equal to or less than the specified quantity for the following commodities, such production shall be considered to be zero:

(1) Wheat—4 bushels per acre.

(2) Corn—9 bushels per acre.

(3) Grain Sorghum—6 bushels per acre.

(4) Barley—5 bushels per acre.

(5) Oats—7 bushels per acre.

(6) Upland cotton—66 pounds per acre.

(7) ELS cotton—33 pounds per acre.

(8) Rice—628 pounds per acre.

(9) Soybeans—2 bushels per acre.

(10) Sunflower, Oil—100 pounds per acre.

(11) Sunflower, Confectionery—100 pounds per acre.

(12) Safflower—50 pounds per acre.

(13) Flax—1 bushel per acre.

(14) Canola—50 pounds per acre.

(15) Rapeseed—50 pounds per acre.

(16) Mustard seed—50 pounds per acre.

*Aquaculture* means the propagation and rearing of aquatic species from a commercial operation conducted on private land or in private waters and in 1994 excludes ornamental fish.

*Aquaculture facility* for 1994 means a commercial operation conducted on private land or in private waters.

*Aquatic species* means any finfish, mollusk, crustaceans, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

*CCC* means the Commodity Credit Corporation.

*Contract payments* means a guaranteed payment for production, as opposed to delivery of a crop pursuant to a contract.

*Crop signup period (1994)* means the signup period ending March 31, 1995 (or other such date established by CCC), for assistance for eligible producers who have incurred 1994 crop losses.

*Crop year* means the year harvest begins for the crop. However, for valencia oranges harvested in 1991, 1992, 1993, and 1994, the crop shall be considered to be a 1990, 1991, and 1993 crop respectively.

*Deputy Administrator* means the FSA Deputy Administrator for Farm Programs (Previously the Deputy Administrator, State and County Operations (DASCO)).

*Disaster payment yield* means:

(1) For target price commodities with respect to farms enrolled and not enrolled in the applicable year's acreage reduction program, the farm program payment yield for the applicable year

determined in accordance with part 1413 of this chapter;

(2) For peanuts, the applicable year's farm yield determined in accordance with part 729 of this title;

(3) For all kinds of tobacco, the county average yield of the 5 years prior to the applicable disaster year, as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest;

(4) For soybeans, sugarcane, sugar beets, and sunflowers, the average of the county average yield for the 5 years prior to the applicable disaster year as determined by NASS, adjusted for adverse weather conditions, in accordance with instructions issued by the Deputy Administrator; such county average yield for sugarcane shall exclude normal seed cane production;

(5) For nonprogram crops (including honey per hive), the average of the actual yields for the 3 years prior to the applicable disaster year, in accordance with instructions issued by the FSA, if eligible producers are able to provide production evidence of actual crop yields for any of the applicable years. If a producer is not able to provide adequate production evidence for the 3 previous years, the county committee shall use a yield that is equivalent to 65 percent of the average county yield for the years without adequate records. The county average yield shall be the average of the county average yields for the 5 years prior to the applicable disaster year, as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest. Crop yields for the 1994 Disaster Assistance Program may be the same yield that was established for the crop for 1993 unless the State committee finds a better source to establish yields. In establishing county average yields for nonprogram crops, the State committee shall use the best available information concerning yields. Such information may include: NASS data, extension service records, credible nongovernment studies, and yields for the crop in similar counties. In the case of sod, sprigging turf, and trees and shrubs, the crop must be dead to be eligible for a disaster payment. For all nonprogram crops, the county committee may reduce the yields set by the State committee for the county or an area of the county, to what the county committee considers a normal yield if:

(i) Cultural practices, including the age of the planting or plantings, are determined to be different from those that were used to establish the yield; or

(ii) The yield was established on a State or area level and it is determined that it was too high for the county or an area of the county.

*Doublecropping* means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

*Eligible crop* for crop production losses means any of the 1990 through 1994 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, or nonprogram crops including ornamental crops, nursery crops, and for 1990 through 1992, and for 1994, aquaculture production, excluding ornamental fish for 1994.

*Eligible disaster* means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, earthquake, or excessive wind, or any combination thereof; or related condition, including but not limited to heat, insect infestation, plant disease, or other deterioration of a crop of a commodity, including aflatoxin, that is accelerated or exacerbated naturally as a result of damaging weather occurring prior to or during harvest as determined by CCC. Curly top virus condition is an eligible disaster condition for losses of 1990 through 1992 crops of sugar beets.

*Expected production* means:

(1) For target price commodities on farms enrolled in the applicable year's acreage reduction program, the disaster payment yield times the sum of the applicable year's actual planted acreage and the applicable crop year's prevented planted acreage of the crop as approved by the county committee, not to exceed the permitted acreage of the crop.

(2) For target price commodities on farms not enrolled in the applicable year's acreage reduction program and for acreage of program crops planted on farms enrolled in such programs which is in excess of the permitted acreage established for the crop in accordance with 7 CFR 1413.11; peanuts; sugarcane excluding seed cane acreage; sugar beets; soybeans; sunflowers; tobacco other than burley tobacco; and nonprogram crops, except as provided in paragraphs (3) through (5) of this definition, the disaster payment yield times the sum of:

(i) The applicable year's planted acreage of the crop, and

(ii) The applicable year's prevented planted acreage credited for disaster payment purposes not to exceed the larger of:

(A) The planted and approved prevented planted acreage of the crop in the year immediately proceeding the disaster crop year minus the applicable disaster crop year's planted acreage of the crop, or

(B) A quantity equal to the average of the acreage planted and approved prevented planted of the crop in the three years prior to the disaster crop year minus the applicable disaster year's planted acreage of the crop.

(3) For quota kinds of tobacco other than burley and flue-cured, the expected production as determined according to paragraph (2) of this definition shall not exceed the result of multiplying the applicable year's effective farm acreage allotment times the disaster payment yield.

(4) For burley tobacco, the smaller of:

(i) The applicable year's effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of part 723 of this title; or

(ii) The disaster payment yield times an acreage determined by dividing the amount in paragraph (4)(i) of this definition by the farm yield established for the farm according to part 723 of this title;

(iii) The disaster payment yield times the sum of the acreage of burley tobacco:

(A) That was planted on the farm in the applicable year, including any approved failed acreage;

(B) For which prevented planted acreage credit is approved by the county committee with respect to the applicable year's crop; and

(C) Determined by dividing the quantity of any unmarketed tobacco on hand from the applicable year's by the disaster payment yield, or

(5) For flue-cured tobacco, the smaller of:

(i) The applicable year's effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of part 723 of this title; or

(ii) The sum of:

(A) The quantity determined under the provisions of paragraph (2) of this definition,

(B) The quantity of any unmarketed tobacco on hand from the previous year's crop, and;

(C) The amount by which the farm's applicable year's basic quota exceeds the previous year's basic quota.

(6) With respect to crops planted in a rotation, the most recent corresponding year(s) in the rotation shall be substituted for the 3 prior year's crop for purposes of determining the prevented planted acreage credit.

*FSA* means the Farm Service Agency.

*Final sign-up period* means the sign-up period beginning October 13, 1992, and ending on February 12, 1993, (or other such date as established by CCC) for assistance to eligible producers who have incurred losses in 1990, 1991, or 1992 but shall not be for a year for which disaster payments were earned under the initial sign-up period.

*Initial signup period* means the signup period ending March 13, 1992 (or other such date as established by CCC), for

assistance for eligible producers who have incurred 1990 or 1991 losses.

*Multiple plantings* means subsequent plantings in the same crop year of nonprogram crops and soybeans that are planted or are prevented from being planted on different acreage on a farm and considered different crops for determining disaster benefits in accordance with instructions issued by the Deputy Administrator.

*Nonprogram crop* means a crop including ornamentals such as flowering shrubs, flowering trees, field or container grown roses, or turf, and sweet potatoes produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county committee in accordance with the instructions issued by the Agency, which is not a crop of a target price commodity, quota or additional peanuts, sugarcane, sugar beets, tobacco subject to marketing quotas, soybeans, or sunflowers. For 1990 through 1992, and 1994 aquaculture production is considered to be a nonprogram crop.

*Operator* means the person who is in general control of the farming operations on the farm during the program year.

*Orchards* means an area of land devoted to the cultivation of fruit trees and nut trees.

*Ornamental fish* for 1994 disaster purposes means any species of fish not being grown for market as food or bait.

*Person* shall mean a person as defined in part 1497 of this chapter, and all rules with respect to the determination of a person found in such part shall be applicable to this part. However, the determinations made in accordance with 7 CFR part 1497, subpart B, Person Determinations, shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

*Producer* means producer as defined in accordance with 7 CFR 1413.3.

*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 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 from all sources.

*Repeat crops* means a second crop of a commodity planted on the same acreage as the first crop of the commodity.

*Replacement crops* means a crop planted on an acreage after the failure or prevented planting of the first crop on that same acreage, except for repeat crops, double-cropped crops, for which disaster benefits are not applicable.

*Subsequent sign-up period* means the sign-up period beginning September 8, 1992, and ending on February 12, 1993, (or other such date as established by CCC) for assistance to eligible producers who have incurred losses on program crops planted in 1991 for harvest in 1992.

*Target price commodity* means a crop of wheat, corn, grain sorghum, barley, oats, upland and extra long staple (ELS) cotton, or rice.

[57 FR 10963, Mar. 31, 1992, as amended at 58 FR 9108, Feb. 19, 1993; 58 FR 51758, Oct. 5, 1993; 60 FR 52611, Oct. 10, 1995]

### §1477.4 Availability of disaster payments.

(a) A person as defined in §1477.3 who has qualifying gross revenues in excess of $2 million for the most recent tax year preceding the crop year for which benefits are requested shall not be eligible to receive disaster benefits under this part.

(b) Eligible producers with 1992 losses of production in excess of 65 percent of expected production must agree to obtain crop insurance, if available, any time during the subsequent or final disaster signup periods, under the Federal Crop Insurance Act for the 1993 crop of the commodity. The requirement is waived if the sales closing date passed for the 1992 crop before October 13, 1992.

(c) Eligible producers with losses of production in excess of 65 percent of expected production must agree to obtain crop insurance, if available, any time during the applicable signup period, under the Federal Crop Insurance Act for the 1994 crop of the commodity for:

(1) Producers requesting 1993 crop loss benefits, and

(2) Producers requesting 1993 through 1995 loss benefits in accordance with §§ 1477.22 and 1477.23.

(d) Eligible producers with a loss of production on a crop in excess of 65 percent of expected production, and who are requesting 1994 crop loss benefits, or 1994 through 1996 losses on orchards, must agree to obtain crop insurance, if available in the county, any time during the disaster application period, as required under the Federal Crop Insurance Act, as a condition of eligibility to receive such disaster benefits. The requirement to purchase crop insurance for the 1995 crop year when there has been a loss in excess of 65 percent of the 1994 crop or losses for 1994 through 1996 losses on orchards does not supersede the requirement to purchase crop insurance as set forth in 7 CFR part 402.

(e) The requirements of paragraphs (b) and (c) of this section are waived if one of the following exists:

(1) Crop insurance is not available for the commodity for which a disaster payment is requested;

(2) The amount of the producer's annual premium rate is greater than 125 percent of the average premium rate on that commodity in the county in which the producer is located;

(3) The amount of the premium is greater than 25 percent of the amount of the disaster payment, deficiency forgiveness, or FSA loans; or

(4) The county committee determines, based on an appeal by the producer, that the purchase of crop insurance would impose an undue financial hardship on the producer.

[58 FR 9109, Feb. 19, 1993, as amended at 58 FR 51759, Oct. 5, 1993; 60 FR 52611, Oct. 10, 1995]

### § 1477.5 Disaster benefits.

(a) Disaster payments for prevented planting, prevented harvest, and low yield losses for eligible crops are authorized to be made to producers who file an Application for Disaster Benefits (Form CCC–441) in accordance with instructions issued by the Deputy Administrator if:

(1) The farm operator, or a producer with an interest in the crop, submits an Application for Disaster Credit (Form ASCS–574) in accordance with instructions issued by the Deputy Administrator;

(2) The farm operator, or a producer with an interest in the crop, submits a report of production and disposition (Form ASCS–658) in accordance with § 1477.9;

(3) The farm operator, or a producer with an interest in the crop, submits a Certification of Crop Insurance (Form CCC–440) in accordance with § 1477.9;

(4) The county committee determines that because of an eligible disaster condition, producers on a farm were:

(i) Prevented from planting an eligible commodity, or

(ii) Unable to harvest at least 40 percent (or in the case of producers with crop insurance on such a crop, 35 percent) of the expected production; and

(5) The farm operator submits a Certification of Income Eligibility (Form CCC–441 Income) in accordance with § 1477.4.

(b)(1) The loss of production that shall be used in making a disaster payment shall be that quantity of production in excess of 40 percent (or 35 percent for producers with crop insurance) of expected production on a farm that producers were unable to harvest due to a reduced yield or were prevented from planting due to an eligible disaster condition.

(2) The loss of production for peanuts shall be prorated between quota peanuts and additional peanuts. The loss of production of quota peanuts shall be determined by multiplying the total loss of production for peanuts times a factor determined by dividing the effective farm poundage quota, prior to any fall transfer, by the expected production for the farm. The loss of production for additional peanuts shall be determined by subtracting the loss of quota production from the total loss of production.

(3) If peanut quota is transferred from a farm under the fall transfer provisions in part 729 of this title, the loss of production of quota peanuts determined in paragraph (b)(2) of this section shall be reduced to the extent of such quantity transferred. If the transferred quota exceeds the loss of production of quota peanuts, no further reductions are required after the loss of

production of quota peanuts has been completely voided.

(4) For the purposes of determining the total quantity of nonprogram crops that producers on a farm are able to harvest, exclude dockage, including husks and shells, if such dockage is excluded in determining yields in accordance with § 1477.3, paragraphs (4) and (5) of the definition of ''disaster payment yield,'' excluding soybean disaster payment yields.

(5) For purposes of determining the total quantity of 1990 through 1993 nonprogram crops and the total quantity of all 1994 crops that producers on a farm are able to harvest, commodities which the county committee determines cannot be sold in normal commercial channels of trade are excluded.

(c) Disaster payment rates shall be 65 percent of:

(1) The established target price for the applicable year's target price commodities including acreage on farms enrolled in the applicable year's acreage reduction program in accordance with 7 CFR 1413.49;

(2) The basic county loan rate for the applicable year's target price commodities for producers on farms not enrolled in the applicable year's acreage reduction program.

(3) The National price support level for quota and additional peanuts and quota kinds of tobacco;

(4) The applicable year's crop support price for sugar beets and sugarcane, determined by regions; and

(5) The simple average price received by producers for the marketing years for the immediately preceding five crops of the commodity, excluding the highest and lowest average prices in such period for all other eligible crops.

(6) The FSA State committee may adjust downward the payment rate established by the State committee for a crop by a factor established by State committee using the following criteria:

(i) If a crop is produced with a significant and variable harvesting expense, the factor will reflect the decreasing cost in the production cycle of the crop that is:

(A) Harvested;

(B) Planted but not harvested; and

(C) Prevented from being planted because of drought, flood, or other natural disaster.

(ii) [Reserved]

(d)(1) Disaster payments shall be made in an amount determined by multiplying: the amount producers are unable to harvest which is in excess of the amount specified in paragraph (b) of this section by the disaster payment rate specified in paragraph (c) of this section.

(2) With respect to eligible producers of target price commodities who are not participants in the applicable years acreage reduction program, and to producers enrolled in such programs who plant an enrolled program crop in excess of the permitted acreage of such crop in accordance with provisions of 7 CFR 1413.11 such computed disaster payment amount shall be reduced by an amount determined by multiplying the acreage reduction factor which was applicable for the crop of such commodity times the amount determined in accordance with paragraph (d)(1) of this section.

(e) Producers of target price commodities enrolled in the applicable year's acreage reduction program shall not be required to refund advance deficiency payment made to such producers with respect to that portion of losses up to 40 percent of expected production or, in the case of producers who had crop insurance on the commodity, up to 35 percent of expected production.

(f) Each eligible producer's share of a disaster payment shall be based on the producer's share of the eligible crop loss. County committees are authorized to establish a different division of the disaster payment than stated above if they believe that the circumstances warrant a different share.

(g) A producer who produces a crop under contract and receives a guaranteed payment for production, as opposed to delivery of a crop pursuant to a contract, shall have the production assigned to the crop by the county committee equal to the amount of the contract payment received. Such production amount shall be determined by dividing the payment amount by the established basic rate for the crop.

(h) Crops and land use for which disaster benefits are not applicable include:

(1) Crops not intended for harvest in the year for which disaster benefits are requested.

(2) By-products resulting from processing or harvesting an eligible crop, such as cotton seed, peanut hulls, and wheat or oat straw.

(3) Except for nursery crops, plants that produce an eligible crop, such as strawberry plants and orange trees.

(4) Acreage intended for haying or grazing and designated as ACR or CU for payment.

(5) Crops which the county committee has determined are not eligible for acreage reduction program benefits as a result of failure to comply with contract provisions.

(6) Crops planted as replacement crops on failed or prevented from planted program crop acreage.

(7) Resource conserving use crops as ACR or CU for payment.

(8) Home gardens.

[57 FR 10963, Mar. 31, 1992, as amended at 58 FR 9109, Feb. 19, 1993; 58 FR 51759, Oct. 5, 1993; 60 FR 52612, Oct. 10, 1995; 60 FR 54409, Oct. 23, 1995]

### § 1477.6 Establishment of different payment rates and yields for the same nonprogram crop.

If any crop yield established for a county or other producing area includes irrigated production, the State committee shall:

(a) establish a nonirrigated yield reflecting the expected yield for the crop without irrigation. Such yield shall not exceed the NASS yield. The State committee may set the nonirrigated yield to zero if no production is expected without irrigation. A separate irrigated yield shall not be established.

(b) (1) Producers of nonprogram crops, (except for soybeans, minor oil seeds, sugar beets, sugarcane, quota and nonquota tobacco, peanuts and hay) must provide actual production evidence and production costs for the current year.

(2) Exceptions to paragraph (b)(1) of this section:

(i) If production evidence and production costs cannot be provided for the current year, then 1 of the 3 previous years production and production costs may be considered.

(ii) The payment yield shall be reduced to not less than 65 percent of the established yield if just 1 of the 3 previous years evidence is used.

(3) If production evidence or costs cannot be provided for the current year or 1 of the 3 previous years, the payment yield shall be reduced to zero, unless one of the following exceptions apply:

(i) If evidence is provided that a market was available for current year production by providing one of the following:

(A) A contract for all expected production or all acres for which disaster benefits are requested; or

(B) Some other acceptable evidence of a market such as a written agreement with a grocer, retailer, wholesaler, or processor.

(ii) The county committee or Federal Crop Insurance Corporation verifies physical evidence of the crops and determines the crop was cared for in a workmanlike manner.

(4) If a producer meets either of the exceptions in paragraphs (3)(i) and (3)(ii) of this section, the county committee has the authority to reduce the yield to not less than 65 percent of the established yield.

(5) The county committee may assign production based on similar farms. The producer must file Form ASCS–574 within 15 calendar days of the disaster occurrence. If no spot check was conducted, the county committee must have personal knowledge of the disaster condition that affected the crop.

[60 FR 52612, Oct. 10, 1995]

### § 1477.7 Filing application for payment.

(a) Applications for payment shall be filed by the applicant with the local FSA office serving the county where the producer's farm is located for administrative purposes.

(b)(1) An application for payment must have been filed as soon as practical after the producer's eligibility has been established in accordance with § 1477.5(a).

(2) Applications for payments made during the initial sign-up period for 1990 and 1991 crop losses must be filed

from February 3 through March 13, 1992.

(3) Applications for payments made during the subsequent sign-up period with respect to program crops planted in 1991 for harvest in 1992 must be filed from September 8, 1992, through February 12, 1993.

(4) Applications for payments made during the final sign-up period with respect to all other 1990, 1991, and 1992 crop losses must be filed from October 13, 1992, through February 12, 1993.

(5) Applications for payments made during the special signup period with respect to the 1992 crop of corn for which production has been affected by low quality due to eligible disaster must be filed by May 7, 1993.

(6) Applications for payments made during the 1993 crop signup period with respect to 1993 crop losses and low quality losses must be filed by March 4, 1994.

(7) Applications for payments made during the 1994 crop signup period with respect to 1994 crop losses, low quality losses, and 1994 through 1996 losses resulting from freeze damage occurring from January 1, 1994, through March 31, 1994, must be filed by March 31, 1995.

(8) Applications for payments for 1990 through 1992 crops eligible for quality adjustments according to §1477.21 must be filed by September 17, 1993.

(9) Applications for payments for 1990 through 1992 sugar beet crop losses because of curly top virus condition must be filed by September 17, 1993.

(10) Applications for payments for 1993 through 1995 crop losses because of Hurricanes Andrew and Iniki and Typhoon Omar must be filed by September 17, 1993.

(c) Any eligible producer who elected to devote all or a portion of a farm's permitted wheat or permitted feed grain acreage or up to 50 percent of a farm's permitted rice or upland cotton acreage to conservation or other uses in accordance with part 1413 of this chapter may request that disaster payments be made available under this part with respect to such acreage in lieu of any payment made available under part 1413 of this chapter. Approval of prevented planting or failed acreage requests will remain the responsibility of the county committee.

(d) For applications filed during the initial sign-up period, if a farm was operated in 1990 by an operator who was not the same operator on the farm in 1991, CCC will accept an application for disaster from both operators, but both operators must agree in writing by March 27, 1992, as to the year for which payment will be provided. If the operators cannot agree with respect to such selection, no payments will be made to any producer on the farm for either year.

(e) For applications filed during the subsequent or final sign-up periods, if a farm was operated in 1990, 1991, or 1992 by an operator who was not the same operator on the farm all years 1990, 1991, and 1992, CCC will accept an application in accordance with paragraphs (b)(2) and (b)(3) of this section from all operators, but all operators must agree in writing by February 12, 1993, as to the year for which payment will be provided. If the operators cannot agree with respect to such selection, no payments shall be made to any producer on the farm for any year.

(f) An operator who was approved to receive disaster benefits during the initial sign-up period and who only operated the farm for the year benefits were received, shall not be required to agree to the year for which payments shall be provided under paragraphs (b)(2) and (b)(3) of this section.

[57 FR 10963, Mar. 31, 1992, as amended at 58 FR 9109, Feb. 19, 1993; 58 FR 51759, Oct. 5, 1993; 60 FR 52613, Oct. 10, 1995]

### §1477.8 Availability of funds.

(a) In the event the total amount of claims submitted under this part or part 1478 of this chapter during the initial sign-up period, the subsequent sign-up period, or final sign-up period respectively, exceeds the applicable funds available for such period such payments shall be reduced by a uniform national percentage. Such payment reductions shall be applied after the imposition of applicable payment limitation provisions.

(b) In the event the total amount of claims submitted under §1477.7 (b)(7), (b)(8), and (b)(9) exceeds the applicable funds available for such claims, such

payments shall be reduced by a uniform national percentage. Such payment reductions shall be applied after the imposition of applicable payment limitation provisions.

[58 FR 9109, Feb. 19, 1993, as amended at 58 FR 51760, Oct. 5, 1993]

### § 1477.9 Report of acreage, production disposition, and indemnity payments.

(a)(1) Eligible producers shall report, in accordance with instructions issued by the Deputy Administrator, the acreage, production, and disposition of all commodities produced in an applicable year on any acreage for which an application for a disaster payment is filed. Such production reports submitted with respect to the 1994 signup period must be submitted by April 14, 1995; with respect to the 1993 signup period by March 27, 1994; and with respect to the 1990 through the 1992 crop quality and curley top virus conditions in sugar beets must be submitted by September 30, 1993; and with respect to 1993 through 1995 losses because of Hurricanes Andrew and Iniki and Typhoon Omar must be submitted by October 8, 1993.

(2) If there has been a disposition of crop production through commercial channels, the eligible producer must furnish documentary evidence of such disposition in order to verify the information provided on the report. Acceptable evidence shall include, but is not limited to, such items as the original or a copy of commercial receipts, peanut and tobacco marketing cards, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries.

(3) If there has been a disposition of crop production other than through commercial channels, the eligible producer must furnish such documentary evidence as the county FSA committee determines to be necessary in order to verify the information provided by the producer.

(b) Eligible producers who have purchased crop insurance with respect to a crop for which a disaster payment is made must present evidence of the net amount of indemnity payment received (gross indemnity less premium paid) or to be received for each such crop in accordance with instructions issued by the Deputy Administrator.

[57 FR 10963, Mar. 31, 1992, as amended at 58 FR 51760, Oct. 5, 1993; 60 FR 52613, Oct. 10, 1995]

### § 1477.10 Payment limitations.

(a) Disaster payments made to eligible producers shall be reduced as provided in this section. For the purpose of making such payment reductions, the term ''producer'' shall be considered to mean the term ''person'' as defined in § 1477.3. Payments for each eligible producer for each eligible commodity shall be reduced by the amount by which the sum of the disaster payment and the net amount of crop insurance indemnity payments (gross indemnity less premium) exceeds 100 percent of the expected production times the applicable basic payment rate established in accordance with § 1477.4.

(b) No person shall receive payments attributable to lost production under this part to the extent that such person receives benefits on such lost production under the livestock emergency provisions of Title VI of the Agricultural Act of 1949.

(c) No person shall be eligible to receive payments under this part for a specific year with respect to target price crops, peanuts, sugar beets, sugarcane, tobacco, soybeans, sunflowers, and nonprogram crops in excess of $100,000.

(d)(1) No person shall receive payments under this part for a specific year, when combined with any benefits received for such year under the livestock emergency provisions of the Agricultural Act of 1949, in excess of $100,000.

(2) Persons filing an application during the 1994 crop signup period who are subject to the provisions of paragraph (d)(1) of this section must elect the provisions under which such payments or benefits shall be received by notifying the county office of the election by April 14, 1995.

(e) All disaster program applications within a specific signup period submitted in accordance with this part, except 1993 or 1994 crop applications, shall be totaled at the end of the signup period. In order to ensure that

there is no duplication of benefits, deficiency payments made in accordance with part 1413 of this chapter and emergency livestock feed program benefits made in accordance with part 1475 of this chapter shall not be made with respect to any loss of production for which assistance is requested under this part. Accordingly, the quantity of the loss of production otherwise eligible for disaster assistance under this part on which a producer had previously obtained a deficiency payment or an emergency livestock feed program benefit shall be reduced. In order to make such a reduction, the deficiency payments and emergency livestock feed program benefits, except those payments applicable to the 1993 or 1994 crop year, shall be adjusted by a national factor obtained by:

(1) Dividing the sum of the applicable fund available and such reduced payments by

(2) The total amount of claims submitted during each applicable signup period. If the total amount of funds is insufficient to result in payments to producers during the initial, subsequent and final signup periods at the rate of .5004, the Secretary shall use such funds of the Commodity Credit Corporation as are necessary to make payments at such a rate.

(f) For the purpose of determining the payment limitation imposed by this section, disaster payments shall be attributed to each eligible producer in accordance with § 1477.5(f). The reduction of any eligible producer's disaster payment share shall not increase the disaster payment share of any other producer.

[57 FR 10963, Mar. 31, 1992, as amended at 58 FR 51760, Oct. 5, 1993; 60 FR 52613, Oct. 10, 1995]

### § 1477.11 Special provisions for burley and flue-cured tobacco, and peanuts.

(a)(1) For burley and flue-cured tobacco, the undermarketings from the applicable crop year that may be considered when determining the effective farm marketing quota for the year succeeding the disaster crop year shall be the applicable crop year's actual undermarketing less the quantity of the loss of production for which an disaster payment is made for the respective kind of tobacco.

(2) If quota is leased and transferred from the farm under natural disaster provisions of parts 723 of this title, any disaster payment that was determined before such lease and transfer was approved shall be recomputed according to § 1477.5. The farm marketing quota that is in effect after such lease and transfer shall be used when recomputing the disaster payment. The amount of any overpayment that results from the recomputation shall be refunded with interest as provided in § 1477.12(b).

(b)(1) For peanuts, the undermarketings from the applicable year's crop that may be claimed when determining future poundage quotas shall be the applicable year's actual undermarketings less the quantity of the loss of production for which a applicable year's disaster payment is made on the basis of the national support level for quota peanuts. This reduction could exceed the actual undermarketings which would result in ''negative'' undermarketings shall be taken into consideration when determining the subsequent year's effective farms poundage quota.

(2) If quota is transferred from the farm under the fall transfer provisions of part 729 of this title, any disaster payment that was determined before such transfer was approved shall be recomputed according to the provisions in § 1477.5. The amount of any overpayment that results from the recomputation shall be refunded with interest as provided in § 1477.13(b).

(c) All operators and owners of tobacco or peanut farms must sign the application for disaster.

[57 FR 10963, Mar. 31, 1992, as amended at 60 FR 52613, Oct. 10, 1995]

### § 1477.12 Misrepresentation, scheme and device, and fraud.

(a) If CCC determines that any producer has erroneously represented any fact or has adopted, participated in, or benefitted from, any scheme or device which has the effect of defeating, or is designed to defeat the purpose of this part, such producer shall not be eligible for disaster payments under this part and all payments previously made to any such producer shall be refunded to CCC. The amount paid to CCC shall

include any interest and other amounts as determined in accordance with this part.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing CCC to make a payment with CCC under this part otherwise would not make, all amounts paid by CCC to any such producer shall be refunded to CCC together with interest and other amounts as determined in accordance with this part, and no further disaster payments shall be made to such producer by CCC.

(c) If the county committee determines that any producer has adopted or participated in any practice which tends to defeat the purpose of the program established in accordance with this part, the county committee request the refund of all or part of the payments which otherwise would be due the producer under this part.

[57 FR 10963, Mar. 31, 1992, as amended at 58 FR 9110, Feb. 19, 1993]

### § 1477.13 Refunds to CCC.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, all such payments made to the producer shall be refunded to CCC, together with interest.

(b) Interest shall be charged with respect to any refund which is determined to be due CCC at the rate of interest which CCC is required to pay for its borrowing from the United States Treasury as of the date of the disbursement by CCC of the moneys to be refunded. Interest shall accrue from the date of such disbursement by CCC. Upon the sending of the notification of the debt by CCC to the producer, the account shall bear late payment charges to be assessed in accordance with the provisions of, and subject to the rates prescribed in, part 1403 of this chapter. If, for any reason, no late payment charges may be assessed with respect to such account under the provisions of part 1403 of this chapter, additional charges on the account will accrue at the rate equal to the applicable rate for CCC borrowing from the United States Treasury plus three percent per annum.

(c) Producers must refund to CCC any excess payments made by CCC.

(d) In the event that the loss of production was established as a result of erroneous information provided by any person to the county FSA office or was erroneously computed by such office, the loss of production shall be recomputed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputation shall be remitted to CCC.

[57 FR 10963, Mar. 31, 1992, as amended at 60 FR 52613, Oct. 10, 1995]

### § 1477.14 Cumulative liability.

(a) The liability of any producer for any payment or refund which is determined in accordance with this part to be to CCC shall 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, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(b) Producers earning benefits shall be liable for any required repayment of deficiency payments on a farm not paid by another producer on that farm.

### § 1477.15 Appeals.

Reconsideration and review of all determinations made in accordance with this part with respect to a farm or an individual producer shall be made in accordance with part 780 of this title.

### § 1477.16 Liens.

Any payment which is due 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, and the proceeds thereof, which may be asserted by any creditor, except agencies of the United States Government.

### § 1477.17 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 an otherwise eligible owner shall be eligible for assistance under this subpart only if such

person meets one of the following requirements:

(1) The minor establishes 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.

### § 1477.18 Death, incompetency, or disappearance.

In the case of death, incompetency of disappearance, of any owner 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.

### § 1477.19 Other regulations.

The following regulations and amendments thereto shall also be applicable to this part:

(a) Part 12 of this title, Highly Erodible Land and Wetland Conservation;

(b) Part 707 of this title, Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent;

(c) Part 719 of this title, Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage;

(d) Part 723 of this title, Tobacco;

(e) Part 729 of this title, Peanuts.

(f) Part 780 of this title, Appeal Regulations;

(g) Part 790 of this title, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(h) Part 791 of this title, Authority to Make Payments When There Has Been a Failure to Comply Fully with the Program;

(i) Part 796 of this title, Denial of Program Eligibility for Controlled Substance Violation;

(j) Part 1403 of this chapter, Debt Settlement, Policies and Procedures;

(k) Part 1413 of this chapter, Feed Grain, Rice, Upland and Extra Long Staple Cotton, Wheat and Related Programs;

(l) Part 1478 of this chapter; Tree Assistance Program;

(m) Part 1497 of this chapter; Payment Limitation; and

(n) Part 1498 of this chapter, Foreign Persons Ineligible for Program Benefits.

(o) Part 402 of this title, Catastrophic Risk Protection Endorsement.

[57 FR 10963, Mar. 31, 1992, as amended at 60 FR 52613, Oct. 10, 1995]

### § 1477.20 Special 1992 crop corn quality adjustment.

Notwithstanding any other provision of this part, the following provisions are applicable to producers of 1992 crop corn whose production has been affected by low quality due to an eligible disaster.

(a) Adjustments will be made to the actual production of 1992 crop corn if the quality of such production has been affected by an eligible disaster. CCC shall adjust the actual production of the 1992 crop of corn by the following factors as determined by CCC to reflect the loss of value in such crop:

(1) Grade #4; production will be reduced by a factor of 20 percent;

(2) Grade #5; production will be reduced by a factor of 50 percent; and

(3) Sample Grade; production will be reduced by a factor of 85 percent.

(b) A request for assistance under this section must be submitted to CCC at the county office in the county where the farm is administratively located by May 7, 1993. Producers who have:

(1) Previously filed an application for disaster benefits for 1992 crop corn on a farm may amend that application to include losses due to reduction in the quality of such crop.

(2) Not previously filed applications for disaster benefits for 1992 crop corn on a farm may file applications for losses due to reduction in the quality, provided such producer has not filed for disaster program benefits for both the 1990 and 1991 crop years.

(c) Any producer entitled to any payment may assign any such payments in accordance with part 1404 of this chapter if the assignment is executed after September 2, 1992.

[58 FR 19768, Apr. 16, 1993, as amended at 58 FR 51760, Oct. 5, 1993]

**§ 1477.21 Adjustments to crop production.**

Notwithstanding any other provisions of this part, the following provisions are applicable to producers of 1990 through 1994 crops of: wheat, corn, barley, oats, grain sorghum, upland cotton, rice, soybeans, sunflowers, peanuts, sugar beets, tobacco, and ELS cotton, whose production has been affected by low quality due to an eligible disaster.

(a) Adjustments will be made to the actual production of wheat, corn, barley, oats, grain sorghum, upland cotton, rice, soybeans, sunflowers, peanuts, sugar beets, tobacco, and ELS cotton, if the quality of such production has been affected by eligible disaster. CCC shall adjust the actual production of the crop by factors as determined by CCC to reflect the loss in value in such crop.

(b) A request for assistance under this section must be submitted to CCC at the FSA office in the county where the farm is administratively located by March 31, 1995, for 1994 crops.

(c) A request for assistance under this section must be submitted to CCC at the county office in the county where the farm is administratively located by March 4, 1994, for 1993 crops.

(d) A request for assistance under this section must be submitted to CCC at the county office in the county where the farm is administratively located by September 17, 1993, for 1990, 1991, and 1992 crops. Producers who have:

(1) Previously filed an application for disaster benefits for a farm for any crop for either 1990 only, 1991 only, or 1992 only may file a new application for all eligible crops for one of the crop years not previously chosen or file a new application to include quality adjustments for all eligible crops for a year previously approved for production losses.

(2) Previously filed an application for a farm for any crop for any two years may file new applications to include quality adjustments for all eligible crops previously approved for production losses and for other crops now eligible in such years. Producers cannot apply for quality adjustments for a different year for any crop on the farm.

(3) Not previously filed an application for a farm for any year may file new applications for 2 years to include quality adjustments for all eligibility crops.

(4) Received benefits in one year shall not refund those benefits for that year to allow the farm to become eligible for a different year.

(e) Any producer entitled to any 1990, 1991, or 1992 quality adjustment payment may assign any such payments in accordance with part 1404 of this chapter if the assignment is executed after December 12, 1991.

(f) No payments to producers may be greater than 50.04 percent of the producer's eligible claim for crop losses in 1990, 1991, or 1992.

[58 FR 51760, Oct. 5, 1993, as amended at 60 FR 52613, Oct. 10, 1995]

**§ 1477.22 1993, 1994, and 1995 crop losses due to Hurricanes Andrew and Iniki and Typhoon Omar.**

Notwithstanding any other provision of this part, the following provisions apply to producers of 1993, 1994, and 1995 crops whose production was affected by Hurricanes Andrew and Iniki and Typhoon Omar.

(a) Crop losses shall be determined as follows:

(1) For nursery and aquaculture crops except papaya, CCC shall:

(i) Determine one loss for 1993 through 1995 by reducing from the inventory on hand at the time of the disaster, the inventory remaining immediately after the disaster occurred; and

(ii) Calculate payments using a rate based on the value of the product at the time of the loss.

(iii) The calculated payment shall be prorated to each year 1993 through 1995, for limiting payments according to section 1477.10, based on the percent of production that would have been sold in each of the years.

(2) For tree crops, CCC shall determine the loss for each year 1993 through 1995 based on expected production and the recovery period as determined by CCC.

(3) For papaya, CCC shall determine the loss for each year 1993 through 1995 based on expected production and the recovery period as determined by CCC.

(i) A request for assistance under this section must be submitted to CCC at the county office in the county where the farm is administratively located by April 13, 1994, and production data must be submitted May 27, 1994, or such other dates as determined by CCC.

(ii) For papaya crops, the CCC shall determine the loss for each year 1993 through 1995 based on expected production and that the papaya plants would not have produced fruit for a lifetime total of more than 3 crop years based on normal cultivation practices.

(iii) The county committee has determined that papaya can be harvested:

(A) Between 12 and 16 months after planting; or

(B) For a lifetime total of 3 years based on normal cultivating practices.

(iv) The calculated payment shall be prorated to each year 1993 through 1995, for limiting payments according to §1477.10, based on the percent of production that would have been sold in each of the years 1993 through 1995.

(v) Any producer entitled to any payment may assign any such payments in accordance with part 1404 of this chapter if the assignment is made after December 1, 1994.

(b) A request for assistance under this section must be submitted to CCC at the county office in the county where the farm is administratively located by September 17, 1993. Producers who have:

(1) Filed an application for a farm for 1990 only, 1991 only, or 1992 only may then file for 1993 to 1995 benefits.

(2) Filed an application for a farm for any crop for crop year 1992 and either 1990 or 1991 may file for 1993 to 1995 benefits.

(3) Filed application for both crop years 1990 and 1991 then the farm is not eligible for 1993 to 1995 benefits.

(4) Not filed an application for any year may file for 1993 to 1995 benefits.

(5) Received benefits in one year shall not refund those benefits for that year to allow the farm to reapply for a different crop year.

(c) Any producer entitled to any payment may assign any such payments in accordance with part 1404 of this chapter if the assignment is executed after July 2, 1993.

[58 FR 51761, Oct. 5, 1993, as amended at 60 FR 52613, Oct. 10, 1995]

### §1477.23 1993 losses of trees, shrubs, or nursery stock and inventory.

The following provisions apply for 1993 losses of trees, shrubs, or nursery stock and inventory grown for commercial sale that would have been sold in either 1993, 1994, or 1995, but which were affected by damaging weather or related condition.

(a) A request for assistance under this section and production evidence must be submitted to the county office in the county where the farm is administratively located by May 27, 1994.

(b) For trees, shrubs, or nursery crops and inventory, the county committee shall:

(1) Determine one loss for 1993 through 1995 by reducing from the inventory on hand at the time of the disaster, the inventory remaining immediately after the disaster occurred; and calculate payments using a rate based on the value of the product at the time of the loss.

(2) The calculated payment shall be prorated to each year 1993 through 1995, for limiting payments in accordance with §1477.10, based on the percent of production that would have been sold in each of the years.

(c) Any producer entitled to a payment may assign any such payments in accordance with part 1404, if the assignment is made after September 9, 1994.

(d) Producers cannot receive tree assistance program benefits and disaster assistance payments on the same production.

[60 FR 52614, Oct. 10, 1995]

### §1477.24 1995 and 1996 orchard crop losses.

To be eligible for disaster assistance payments, losses to orchard crops must have resulted from a freeze that occurred between January 1, 1994, and March 31, 1994, and crop insurance was not available for affected orchard crop producers in the county or area.

(1) CCC shall determine the loss for each year 1995 and 1996 based on expected production and the recovery period, as determined by the county committee.

(b) A request for assistance under this section must be submitted to the county office in the county where the orchard is administratively located by March 31, 1995, and production data must be submitted by April 14, 1995, or other dates as determined by CCC.

(c) For such orchards subject to frost, the FSA county committee shall determine the loss for each of the years 1995 and 1996 based on expected production for the orchard.

(d) The calculated payment shall be determined separately for 1994, 1995, and 1996. A separate application shall be taken for each year. However, payments will be limited in accordance with § 1477.10.

(e) Any producer entitled to any payment may assign any such payments in accordance with part 1404 of this chapter if the assignment is made after September 30, 1994.

[60 FR 52614, Oct. 10, 1995]

### § 1477.26 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements of this part have been approved by the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and designated OMB No. 0560–0050, 0560–0004, and 0560–0092.

[57 FR 10963, Mar. 31, 1992. Redesignated at 58 FR 51760, Oct. 5, 1993. Redesignated at 60 FR 52614, Oct. 10, 1995]

## PART 1478—TREE ASSISTANCE PROGRAM

Sec.

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AUTHORITY: 7 U.S.C. 1421 note; 15 U.S.C. 714b and 714c; 104 Stat. 3359; 105 Stat. 1701; 106 Stat. 117; 107 Stat. 739; 108 Stat. 3; and 108 Stat. 2435.

SOURCE: 57 FR 10968, Mar. 31, 1992, unless otherwise noted.

### § 1478.1 General statement.

(a) The regulations in this part set forth the terms and conditions of the Tree Assistance Program (TAP) authorized by title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act). Within specified limits, CCC is authorized by the 1990 Act to:

(1) Reimburse eligible owners for part of the cost of replanting, reseeding, or repairing eligible trees to offset losses by an eligible orhardist for trees that were planted in any year to produce annual crops for commercial purposes but were lost due to damaging weather, or related condition in 1994; and

(2) Reimburse eligible owners for part of the cost of replanting, reseeding, or repairing seedlings which would have produced trees to be harvested for commercial purposes which were planted in 1992 or 1993 and were lost in 1993 (1993 losses) and planted in 1993 or 1994 for 1994 losses, due to damaging weather, or related condition in 1993 and 1994. However;

(i) Such trees, seedlings or nursery inventory must be planted for commercial purposes and may not be:

(A) Open-field-grown sod, grasses, legumes, and other plants, that are grown in a manner that does not allow them to be counted individually or by using statistical sampling; or

(B) Plants grown for shelterbelts and wildlife enhancement plantings; and

(ii) If the request for assistance is for:

(A) Trees planted to produce annual crops, the losses must be due to damaging weather or related condition;

(B) Seedlings planted to produce trees for harvest, the losses must be

due to damaging weather or related condition;

(C) Nursery inventory, the losses must be due to damaging weather or related condition;

(D) Aquatic plants, the losses must be due to damaging weather or related condition; and

(E) Owners must elect whether trees which qualify as either nursery inventory or orchard trees may be enrolled as either but not be enrolled as both nursery inventory and orchard trees.

(3) Reimburse eligible owners for an individual stand of nursery trees or nursery plants.

(b) Such assistance may not exceed 65 percent of the eligible reseeding costs and may be based on average costs or the actual costs for the replanting practices, as determined by CCC, which, after adjustments for normal mortality, exceed a 35 percent loss.

(c) Unless an extension, not to exceed 24 months is granted by the State FSA committee, all 1993 and 1994 TAP practices must be completed within 24 months of the last day of the applicable signup. The State FSA committee shall only approve up to an additional 24 months when delays are beyond the control of the applicants.

[60 FR 52614, Oct. 10, 1995]

### §1478.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by FSA State and county 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 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 this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(3) Require the county committee to approve late-filed requests received after signup ends only for those owners who applied late due to circumstances beyond their control as determined by the county committee.

(4) Require the county committee to approve applications only for those owners of trees and plants who actually owned the trees at time of the eligible disaster at the time of application.

(d) No 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.

[57 FR 10968, Mar. 31, 1992, as amended at 60 FR 52614, Oct. 10, 1995]

### §1478.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present.

(b) The following terms contained in this part shall have the following meanings:

*Annual gross revenue* means with respect to a person, as defined in part 1497 of this chapter:

(1) For a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the total gross income received from such operations.

(2) For a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the total gross income from all sources.

(3) The determinations made in accordance with 7 CFR 1497.3 shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

(4) The year for which the annual gross income shall be received for the purpose of this definition shall be the tax year preceding the year during which the losses occurred.

*Approving official* means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

*CCC* means the Commodity Credit Corporation.

*County* means a county or similar geographic area as determined by CCC.

*Deputy Administrator*, or Deputy Administrator, FSA, U.S. Department of Agriculture.

*Eligible owner* means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity and includes any Indian tribe under the Indian Self-Determination and Education Assistance Act; any Indian organization or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Assistance Act; and, any economic enterprise under the Indian Financing Act of 1974 which meets the requirements of this part. Federal, State, and local governments and agencies and political subdivisions thereof are specifically excluded. In determining whether an individual or other entity is an eligible owner, such person, as determined under part 1497 of this chapter, must own 1,000 acres or less of trees which: produce annual crops for commercial purposes; or are grown for harvest for commercial purposes. Such person, as determined under part 1497, must also have annual gross revenue of $2.0 million or less, as determined under this part. Such person must also have owned the trees when the natural disaster occurred and when the application is submitted. As successor-in-interest, the applicant is allowed to receive TAP benefits if an otherwise eligible person:

(1) Acquires ownership of land or trees for which TAP benefits have been applied;

(2) Agrees to complete all practices which the original owner has not completed;

(3) Agrees to maintain the practice during the lifespan;

(4) Agrees to receive any remaining payments and assumes full responsibility for all provisions of TAP, including refund of payments made to the original participant, if necessary; and

(5) Agrees to provide a signed and dated written agreement to county committee for approval of any successor-in-interest.

*Eligible trees* means:

(1) For, 1993 and 1994 losses, nursery inventory which are determined by CCC to have been planted for commercial sale.

(2) For the 1993 and 1994 losses, forest tree seedlings, orchard trees, and nursery inventory, including non-tree plants.

*Executive Vice President* means the Executive Vice President, CCC, or a designee of the Executive Vice President.

*FSA* means the Farm Service Agency.

*Harvest* means the removal of the tree from the ground by the cutting and removal of the whole tree at its base in a manner which separates the tree from its root system.

*Natural Disaster* means damaging weather or related condition in 1993 for nursery inventory; and, 1994 for nursery inventory, orchard trees and forest tree seedlings, including the Midwest Floods of 1993. Losses of plants caused by damaging weather must be directly caused by the weather to be eligible for TAP.

*Individual stand* means an area of eligible trees which are tended by an eligible owner as a single operation, whether or not such trees or plants are planted in the same field or similar location, as determined by CCC.

Differing species of trees or plants in the same field or similar area may be considered to be separate individual stands if CCC determines that the species have significantly differing levels of freeze, drought, earthquake, hurricane, or typhoon susceptibility.

*Local county office* means with respect to individual stands of eligible trees which are grown on a farm:

(1) Which has been assigned an FSA farm serial number, the county FSA office which services such farm; or

(2) Which has not been assigned an FSA farm serial number, the county office which services the county in which such stand is located.

*Normal mortality* means:

(1) With respect to a request for relief for trees planted to produce annual crops the average extent of plant death on the individual stand which normally would have occurred with respect to eligible seedlings during the 12 months previous to the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly effect seedling of tree survival rates in the local area, as determined by the county committee in accordance with instructions issued by FSA.

(2) With respect to a request for relief for seedlings planted to produce trees for harvest the average extent of plant death on the individual stand which normally would have occurred with respect to eligible seedlings during the period between the time of planting and the time of the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly effect seedling or tree survival rates in the local area, as determined by the county committee in accordance with instructions of the Deputy Administrator.

(3) With respect to nursery inventory planted for commercial purposes, the average extent of plant death on the individual stand which normally would have occurred with respect to eligible nursery inventory during the 12 months previous to the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly affect nursery inventory survival rates in the local area, as determined by the county committee in accordance with instructions issued by FSA.

*Nursery inventory* means all commercial nursery plants grown for transplant or sale, including aquatic plants, ornamental, field or container grown plants, excluding open grown field grown sod, grasses, legumes, and similar plants as determined by the Deputy Administrator.

*Operator* means a person who is in general control for the tree farming operations as determined by CCC.

*Seedling* means a tree or plant which was planted in the ground for commercial purposes.

*State* means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

*State committee, State office, county, committee, or county office,* means the respective FSA committee or FSA office.

*Subsequent signup period* means the signup period for assistance for 1993 and 1994 losses which will be held only when the President declares an economic emergency as specified in Public Law 103–211 and Public Law 103–330.

(c) In the regulations in this part and in all instructions, terms, and documents in connection therewith, all other words and phrases specifically relating to FSA operations shall, unless the context of the subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases in part 719 of this title.

[60 FR 52615, Oct. 10, 1995]

### §1478.4 Program availability.

(a) A request for assistance under this part made available during the initial signup period must be submitted to CCC at the county office in the county where the farm is administered by March 31, 1995.

(b) Final signup period means the signup period beginning on May 9, 1994, and ending on July 29, 1994, for 1993 nursery losses; November 21, 1994, through March 31, 1995, for 1994 losses; or other such date as established by CCC. All related documentation shall be submitted no later than July 15, 1995, for assistance to eligible producers who have incurred losses in 1994 caused by damaging weather.

[60 FR 52616, Oct. 10, 1995]

### §1478.5 Qualifying loss.

(a) A person shall be eligible to receive assistance under this part with respect to losses due to damaging weather, including but not limited to drought, freeze, earthquake, or related

conditions in 1993 or 1994; in addition, losses due to hurricane, typhoon, or related conditions in 1993 or 1994; only if such owner is an eligible owner, as defined in this part and has sustained a qualifying loss of eligible trees, tree seedlings, or nursery inventory as determined by CCC. The only type of losses which may be considered qualifying are the following:

(1) A qualifying loss of an individual stand of trees on which the total mortality rate exceeded 35 percent plus the normal mortality rate by an eligible owner, who is an orchardist and who is the owner of the eligible trees planted in any year for commercial purposes, which are lost as a result of a freeze, earthquake, or related conditions in 1993 or 1994, or freeze, earthquake, hurricane, typhoon, or related conditions in 1993 or 1994 or damaging weather or related conditions in 1993 or 1994 as determined by the county committee in accordance with the instructions of the Deputy Administrator;

(2) A qualifying loss of an individual stand of trees on which the total mortality rate exceeds 35 percent plus the normal mortality rate by an eligible owner who grows trees for harvest for commercial purposes and is the owner of the eligible tree seedlings which were either planted in 1993 or 1994 and were lost due to drought, earthquake, or related conditions in 1993 or 1994 or planted in 1993 or 1994 and were lost due to damaging weather, including drought, earthquake, hurricane, typhoon, or related conditions in 1993 or 1994, as determined by the county committee in accordance with instructions of the FSA; or

(3) A loss by an eligible owner who grows nursery inventory for commercial purposes which is lost as a result of damaging weather, or related conditions in 1993 for nurseries, and 1994 for nurseries, orchards and forest trees, as determined by the county committee in accordance with instructions of the Deputy Administrator.

(b) Qualifying loss determinations shall be made on an individual stand basis. A qualifying loss shall be the loss for the individual stand of eligible tree seedlings, eligible trees, or eligible nursery inventory, as appropriate, after taking into account the normal mortality of such seedlings, trees or nursery inventory, as appropriate, on such stand, in excess of 35 percent mortality (adjusted for normal mortality). Qualifying losses shall not include losses which could have been prevented through readily-available horticultural measures.

(c) When visible evidence of losses no longer exists on the site where the trees were planted, acceptable evidence as determined in accordance with instructions issued by the Deputy Administrator must be established for the county committee to qualify the individual stand for the program.

(d) Losses from 1994 disasters with respect to nursery inventory plants that produced an annual crop which was also lost are eligible if assistance was not provided with respect to such plant under part 1477 of this chapter. Payment under TAP is also authorized for owners who replant or rehabilitate orchard trees when the crop from such trees are also enrolled for benefits under part 1477 of this chapter. A person shall be eligible to receive assistance under this part for 1993 crop losses (forest tree seedlings, orchard trees, and nursery inventory) resulting from damaging weather or related conditions as associated with the conditions (as defined in sec. 2251 of Public Law 101–624) in 1993, Public Law 103–211 in 1993 and Public Law 103–330 in 1994. Also, a person shall be only eligible to receive assistance on that portion of nursery inventory plants enrolled under part 1477 of this chapter that did not receive direct benefits under part 1477 of this chapter. The portion which did not receive direct benefits under part 1477 of this chapter shall be that portion of the loss for which no compensation is made because loss levels had not reached the minimum threshold required before any payment can be earned.

(e) Eligible plants exclude plants:

(1) That were planted under the Conservation Reserve Program; and

(2) That were the subject of any cost-share assistance or other assistance under any other Federal program, unless approved in writing by the FSA.

[58 FR 9111, Feb. 19, 1993, as amended at 58 FR 51761, Oct. 5, 1993; 60 FR 52616, Oct. 10, 1995]

**§1478.6 Eligible costs.**

(a) Payments under this part shall be made by CCC and may be made only to the extent that payment is specifically provided for in this part. CCC shall, under this part, to the extent of the availability of funds, reimburse an eligible owner for 65 percent of the eligible costs of re-establishing seedlings, trees, or nursery plants, not in excess of the number of seedlings, trees, or nursery plants constituting the qualifying loss. Such reimbursement may be based on average costs or the actual costs for the replanting, reseeding, or repairing practices, as determined by CCC. Producers with trees, or nursery plants, who are eligible for both disaster and TAP payments must choose from which program they want to receive payment. That portion of plants enrolled under part 1477 of this chapter that did not receive direct benefits are eligible for TAP. The first 35 to 40 percent uninsured mortality for which part 1477 of this chapter benefits are not provided is defined as not receiving direct payment and may be eligible for TAP. If the costs are to replace lost trees, or nursery plants, the costs shall only be for replacement seedlings or plants of a size and quality determined by CCC to be sufficient for that purpose. The costs for which cost-sharing shall be permitted shall only be the costs of the seedlings or nursery plants, tree or plant rehabilitation measures, site preparation measures, and debris handling measures that are normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival; chemicals and nutrients if needed to ensure successful plant survival; labor used to physically plant or rehabilitate such seedlings as based on standard labor rates as determined by the county committee; and nursery plant containers and tree wraps. Eligible costs specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and tree stand improvements, and re-establishing greenhouse structures and windscreens.

(b) Eligible costs shall not include costs incurred for replanting species of seedlings or nursery plants differing significantly from the species of the seedlings, trees, or nursery plants constituting the qualifying loss except as approved by CCC. If such substitution is approved, eligible costs shall be the lesser of:

(1) The actual eligible costs incurred; or

(2) The estimated eligible costs which otherwise would have been incurred.

(c) Eligible costs shall only include costs approved within the limits set by this part including, but not limited to, those limits set forth in paragraph (a) of this section. Eligible costs include costs incurred before an application for payment is submitted to CCC. Eligible costs shall only include those costs for which the eligible owner has submitted documentation determined by CCC to adequately document such costs.

(d) The amount of assistance which shall be paid by CCC, shall not exceed the lesser of 65 percent of the eligible costs actually incurred by an eligible applicant from replanting the qualifying loss, or 65 percent of the estimated average cost to replant or rehabilitate the qualifying loss, as established by CCC.

(e) Payments made shall be at the minimum level needed to re-establish the individual stand, as determined by the State committee or, if redelegated, by the county committee.

[58 FR 9111, Feb. 19, 1993, as amended at 60 FR 52616, Oct. 10, 1995]

**§1478.7 Payment.**

(a) Applications for payment shall be filed by the eligible owner with the local FSA office and shall contain an estimate by the applicant of the number of seedlings or trees which constitute the qualifying loss and the amount of the acreage of the individual stands with respect to which the loss was suffered.

(b)(1) The county committee or a designee may conduct field reviews to determine the actual qualifying loss and the acreage of individual stands with respect to which the loss was suffered. The county committee and, if designated by the county committee, the county executive director, are authorized, subject to the provisions of this part, to approve or disapprove all applications, subject to the limitations and

conditions of this part, provided the applicant is not a county committee member or an FSA employee.

(2) The State committee, or a designee, is authorized to approve or disapprove applications of the county committee members and all FSA employees except an application which may be submitted by the State Executive Director, or by a State Committee member.

(3) Deputy Administrator, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application shall not be approved until sufficient additional information is provided by the owner.

(c) Payments to each eligible owner may be reduced on a pro rate basis in the event claims for assistance under this part and part 1477 of this chapter exceed appropriated amounts. Such payment reductions shall be applied after the imposition of the $25,000 per person payment limitation.

[57 FR 10968, Mar. 31, 1992, as amended at 60 FR 52617, Oct. 10, 1995]

### § 1478.8 Obligations of an eligible owner.

(a) Eligible owners must submit a request for assistance on a form approved by CCC and must also submit all documentation requested by the appropriate official which is necessary to make determinations specified in this part.

(b) Eligible owners must:

(1) Comply with all terms and conditions of this part;

(2) Execute all required documents;

(3) Comply with all applicable noxious weed laws; and

(4) Maintain the practice for either 5 years after installation, unless CCC determines that a shorter period is necessary, or 10 years if the trees established on acreage received previous Federal cost-share assistance for tree establishment. Nursery inventory has no practice maintenance requirement.

(c) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, or other condition for payment imposed by the county or State FSA committee or the Deputy Administrator such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under part 1403 of this chapter and computed from the date of disbursement by CCC of the payment to the date of the refund.

(d) Eligible owners who have been paid but choose not to implement their practices by the final practice expiration date shall refund their payments with interest. Interest on these refunds shall be calculated beginning on the date the payment was disbursed. Such refund amounts may be reduced by CCC, at CCC's discretion, when only part of the required replanting practice is not implemented.

(e) Eligible owners must allow representatives of CCC to visit the site for the purposes of quantifying mortality and certifying practice completion.

[57 FR 10968, Mar. 31, 1992, as amended at 58 FR 9111, Feb. 19, 1993; 58 FR 51762, Oct. 5, 1993; 60 FR 52617, Oct. 10, 1995]

### § 1478.9 Payment limitations.

(a) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of orchard trees planted for an annual crop of fruit, nuts, syrup, or other related commercial products shall not exceed $25,000 for

1990 losses due to freeze, earthquake, or related condition; $25,000 for 1991 losses due to freeze, earthquake, or related condition; $25,000 for 1992 losses due to freeze, earthquake, or related condition; $25,000 for 1992 losses due to hurricane, typhoon, or related condition; $25,000 for 1993 losses resulting from damaging weather or related conditions; $25,000 for 1994 losses resulting from damaging weather or related conditions associated with the conditions (as defined in sec. 2251 of Public Law 101–624. Participants may elect not to replant the maximum amount of eligible trees because of the limitation being reached for payment limitation purposes or any other reason. If an original owner has entered into TAP and the ownership of land or trees is transferred to another owner, county offices shall not pay an increased amount for the trees covered by the original agreement because of an increase in the number of ''persons'' associated with the new ownership.

(b) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of forest tree seedlings planted to produce trees for harvest shall not exceed $25,000 for 1990 losses due to drought, earthquake, or related conditions; $25,000 for 1991 losses due to drought, earthquake, or related conditions; and $25,000 for 1992 losses due to drought, earthquake, or related conditions; and $25,000 for 1992 losses due to hurricane, typhoon, or related conditions; $25,000 for 1993 losses resulting from damaging weather or related conditions; $25,000 for 1994 losses due to damaging weather or related conditions associated with the condition (as defined in sec. 2251 of Public Law 101–624. Participants may elect not to replant the maximum amount of eligible trees because of the limitation being reached for payment limitation purposes or any other reason. If an original owner has entered into TAP and the ownership of land or trees is transferred to another owner, county offices shall not pay an increased amount for the trees covered by the original agreement because of an increase in the number of ''persons'' associated with the new ownership.

(c) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of nursery inventory shall not exceed $25,000 for 1992 for losses due to hurricane, typhoon, and related conditions; for $25,000 for 1993 for losses due to damaging weather or related conditions; and $25,000 for 1994 for losses due to damaging weather or related conditions.

[60 FR 52617, Oct. 10, 1995]

### § 1478.10 Liens and claims of creditors; set-offs.

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 in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at part 1403 of this chapter shall be applicable to this part.

[60 FR 52617, Oct. 10, 1995]

### § 1478.11 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 part 780 of this title or as established by the National Appeals Division, USDA whichever is applicable.

[60 FR 52617, Oct. 10, 1995]

### § 1478.12 Misrepresentation and scheme or device.

(a) A person who 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 shall be ineligible to receive assistance under this program.

(b) All moneys paid by CCC under this part to any such person or to any other person as a result of such person's actions shall be refunded to CCC

with interest together with such other sums as may become due. The party engaged in acts prohibited by this section and the party receiving payment shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided to CCC in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

[60 FR 52618, Oct. 10, 1995]

### § 1478.13 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 an otherwise eligible owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The minor establishes 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.

### § 1478.14 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance of any owner 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.

[60 FR 52618, Oct. 10, 1995]

### § 1478.15 Other regulations.

In addition to any other regulations as may be applicable, the following regulations shall also apply to this part:

(a) Part 12 of this title, Highly Erodible Land and Wetland Conservation;

(b) Part 780 of this title, Appeal Regulations;

(c) Part 790 of this title, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(d) Part 791 of this title, Authority to Make Payments When There Has Been a Failure to Comply with the Program;

(e) Part 796 of this title, Denial of Program Eligibility for Controlled Substance Violations;

(f) Part 1403 of this chapter, Debt Settlements, Policies and Procedures;

(g) Part 1413 of this chapter, Feed Grain, Rice, Upland and Extra Long Staple Cotton, Wheat and Related Programs;

(h) Part 1477 of this chapter, Disaster Payment Program for 1990 and Subsequent Crops;

(i) Part 1497 of this chapter, Payment Limitation; and

(j) Part 1498 of this chapter, Foreign Persons Ineligible for Program Benefits.

### § 1478.16 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part have been submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and the OMB Number 0560–0082 has been assigned.

[60 FR 52618, Oct. 10, 1995]

## PART 1479—FORAGE ASSISTANCE PROGRAM

Sec.

1479.1 General statement.
1479.2 Administration.
1479.3 Definitions.
1479.4 Funding.
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1479.6 Eligible costs.
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1479.8 Application for FAP Agreement.
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1479.15 Estates, trusts, and minors.
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1479.17 Other regulations.
1479.18 Paperwork Reduction Act assigned numbers.

AUTHORITY: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); sec. 103 of the Disaster Assistance Act of 1988, 102 Stat. 932 (7 U.S.C. 1471d *note*).

SOURCE: 53 FR 41309, Oct. 21, 1988, unless otherwise noted.

### §1479.1 General statement.

The regulations in this part set forth the terms and conditions of the Forage Assistance Program (FAP) authorized by section 103 of the Disaster Assistance Act of 1988. Within specified limits, CCC is authorized to pay eligible persons 50 percent of the cost of reseeding established pasture damaged in 1988 due to 1988 drought or related conditions.

### §1479.2 Administration.

(a) This part shall be administered by CCC 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 Farm Service Agency (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, as amended or supplemented.

(c) The State committee shall take any action required by this part 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 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, 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.

### §1479.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present.

(b) The following terms contained in this part shall have the following meanings:

*Approving Official* means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

*FSA* means the Farm Service Agency.

*CCC* means the Commodity Credit Corporation.

*County* means a county or similar geographic area as determined by CCC.

*DASCO* means Deputy Administrator or Acting Deputy Administrator, State and County Operations, FSA, U.S. Department of Agriculture.

*Established pasture* means land in permanent vegetative cover used exclusively for grazing by livestock.

*Executive Vice President* means the Executive Vice President of the Commodity Credit Corporation.

*FAP Agreement* means the cost-share agreement entered into by an eligible person and CCC pursuant to the provisions of this part.

*Forage crop* means a nonannual crop which is used for livestock for grazing.

*Local FSA Office* means with respect to:

(1) Individual pastures on a farm which has been assigned as FSA farm serial number, the county FSA office which serves such farm; or

(2) All other pastures, the county FSA office which serves the county in which the pasture is located.

*Operator* means a person who is in general control of the farming operations on the farm as determined by CCC.

*Secretary* means the Secretary of Agriculture.

*State* means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

*State committee, State office, county committee, or county office* means the respective ASC committee or FSA office.

(c) In the regulations in this part and in all instructions, terms, and documents in connection therewith, all other words and phrases specifically relating to FSA operations shall, unless the context of the subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases in 7 CFR part 719.

### § 1479.4 Funding.

No more than $50 million of CCC funds may be expended for the program. FAP assistance for which persons are otherwise eligible under this part may be adjusted, prorated, or reduced as the Executive Vice President deems appropriate to facilitate the equitable proration of funds for this purpose.

### § 1479.5 Eligible established pasture.

FAP cost-share assistance shall be available only for reseeding eligible established pasture. Such pasture shall be only established pasture which has been damaged in 1988 due to the 1988 drought or related 1988 conditions.

### § 1479.6 Eligible costs.

(a) FAP payments shall only be made with respect to 50 percent of costs incurred by an eligible person only for the cost of replanting a forage crop on the eligible established pasture. Such costs shall include only the cost of the seeds, planting, seedbed preparation, and nutrients needed to ensure successful plant survival, and labor, as based on standard labor rates as determined by the county committee, used to physically plant such seeds. Eligible costs specifically exclude items such as fencing, pesticides, irrigation, irrigation equipment, measures to protect seedings from wildlife, and general land and pasture improvements.

(b) Eligible costs shall not include costs incurred for replanting a forage crop differing significantly from the forage crop constituting the qualifying loss, except as determined by CCC. If such substitution is approved, eligible costs shall, unless approved in written instructions issued by DASCO, be the lessor of:

(1) The actual costs incurred for the substituted forage crop; or

(2) The estimated costs which would have been incurred for the original forage crop.

(c) Eligible costs shall only include reasonable costs which have been incurred for which the eligible person has presented adequate documentation and, except as otherwise authorized by DASCO, shall not include costs for a practice or activity which has not been completed.

(d) The amount of payments which shall be made by CCC, subject to the availability of funds, shall not exceed 50 percent of the eligible costs as determined by CCC.

(e)(1) Notwithstanding the provisions of paragraph (b) of this section, an application for payment shall not be approved by the county committee without the written approval of the State committee if such payment would exceed $100.00 per acre for the reseeded acres constituting the qualifying loss.

(2) The State committee may not, without the written approval of DASCO approve an application for payment if such payment would exceed $150.00 per acre.

(f) FAP assistance may only be provided to eligible persons when:

(1) The forage crop will not regenerate naturally;

(2) Reseeding in the most cost-effective method to reestablish such crop; and

(3) Reseeding is not undertaken simply to improve the forage crop damaged by the drought.

(g) FAP cost-share assistance shall be available only if the request by an eligible person for assistance under this part is filed by May 15, 1989.

(h) All activities for which FAP assistance is requested shall be completed by the date specified in the FAP agreement.

[53 FR 41309, Oct. 21, 1988, and amended at 54 FR 965, Jan. 11, 1989]

### § 1479.7 Eligible person.

(a) A person shall be eligible for FAP assistance only if the person is an owner or operator of eligible established pasture.

(b) A person is an eligible person for FAP assistance only to the extent of eligible costs incurred by such person. A person shall be considered an eligible

person only for a FAP payment up to the net costs incurred by that person exclusive of any payment or reimbursement to that person or that person's account for such costs; provided further that if the applicant is the operator of the property such operator shall not be deemed to have incurred costs for reseeding to the extent that such operator has been, or is, reimbursed or paid by the owner of the land, directly or indirectly, for such costs.

(c)(1) An eligible person may be an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity, including:

(i) Any Indian tribe under the Indian Self-Determination and Education Assistance Act;

(ii) Any Indian organization or entity chartered under the Indian Reorganization Act;

(iii) Any tribal organization under the Indian Self-Determination and Education Assistance Act; and,

(iv) Any economic enterprise under the Indian Financing Act of 1974 that meets the requirements of this part. Federal, State and local governments and agencies and political subdivisions thereof are specifically excluded.

(2) Federal, State and local governments and agencies and political subdivisions thereof, shall not be considered to be eligible persons for purposes of this part.

[53 FR 41309, Oct. 21, 1988, and amended at 54 FR 965, Jan. 11, 1989]

### § 1479.8 Application for FAP Agreement.

(a) Application for a FAP agreement shall be filed by the eligible owner or operator on a form approved by CCC with the local FSA office.

(b)(1) The county committee or designee shall review each application. The county committee and, if designated by the county committee, the county executive director, is authorized to approve or disapprove all applications provided the applicant is not a county committee member or an FSA employee.

(2) The State committee, or a designee, is authorized to approve or disapprove applications of the county committee members and all FSA employees except an application which may be submitted by the State Executive Director.

(3) DASCO, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the applicant meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the applicant's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the applicant is incomplete or ambiguous and sufficient information is not otherwise available with respect to the applicant's farming operations in order to make a determination as to the applicant's eligibility, the application shall not be approved until sufficient additional information is provided by the applicant.

(5) An applicant shall be notified in writing of the action taken by the approving official with respect to the application.

[53 FR 41309, Oct. 21, 1988, and amended at 54 FR 965, Jan. 11, 1989]

### § 1479.9 FAP Agreement.

The FAP agreement shall set forth the reseeding requirements, incuding the period for which the reseeded forage crop must be maintained, seeding rates, eligible seed, fertilizer, and the amount of the eligible established pasture to be reseeded. The requirements for reseeding in the FAP agreement shall be in accord with county FAP reseeding standards developed by the county committee.

### § 1479.10 Obligations of person entering into FAP Agreement.

(a) A person entering into a FAP agreement must:

(1) Submit all documentation requested by the approving official which is necessary to make all determinations specified in this part;

(2) Comply with all terms and conditions of such agreement and of this part;

(3) Execute all required documents; and

(4) Comply with all applicable noxious weed laws.

(b) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under 7 CFR part 1403 and computed from the date of disbursement by CCC of the payment to be refunded to the date of the refund.

### § 1479.11 Payment limitation.

No person, as determined under part 795 of this title, shall receive more than $3,500 of payments under this part.

### § 1479.12 Liens and claims of creditors; setoffs.

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 in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at part 13 of this title shall be applicable to this part.

### § 1479.13 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 part 780 of this chapter.

### § 1479.14 Misrepresentation and Scheme or Device.

A person who is determined by the State committee or the county committee to have:

(a) Adopted any scheme or other device which tends to defeat the purpose of this program;

(b) Made any fraudulent representation; or

(c) Misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program.

### § 1479.15 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 their authority to execute such documents.

(b) A minor who is an eligible person 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.

### § 1479.16 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance, of any owner 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.

### § 1479.17 Other regulations.

The following regulations shall also apply to this part unless otherwise specified in those regulations:

(a) Part 12, Highly Erodible Land and Wetland Conservation;

(b) Part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(c) Part 791, Authority to Make Payments When There Has Been a Failure To Comply With the Program;

(d) Part 796, Denial of Program Eligibility for Controlled Substance Violations;

(e) Part 1403, Interest on Delinquent Debt; and

(f) All other parts of the Code of Federal Regulations which are applicable to 7 CFR part 1479.

**§ 1479.18 Paperwork Reduction Act assigned numbers.**

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

# SUBCHAPTER C—EXPORT PROGRAMS

## 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:

(a) *Activity*—a specific market development effort undertaken by a participant.

(b) *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.)

(c) *Administrator*—the Administrator, FAS, USDA, or designee.

(d) *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.

(e) *APAR*—activity plan amendment request.

(f) *Attache/Counselor*—the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

(g) *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.

(h) *CCC*—the Commodity Credit Corporation.

(i) *Contribution*—the cost-share expenditure made by a participant in support of an approved activity.

(j) *Demonstration projects*—activities involving the erection or construction of a structure or facility or the installation of equipment.

(k) *Deputy Administrator*—the Deputy Administrator, Commodity and Marketing Programs, FAS, USDA, or designee.

(l) *Division Director*—the director of a commodity division, Commodity and Marketing Programs, FAS, USDA.

(m) *EIP/MAP*—the Export Incentive Program/Market Access Program.

(n) *EIP/MAP participant*—a U.S. commercial entity which has entered into an EIP/MAP agreement with CCC.

(o) *Eligible commodity*—the agricultural commodity that is represented by an applicant.

(p) *Exported commodity*—an agricultural commodity that is sold to buyers in, or is donated to, a foreign country.

(q) *FAS*—Foreign Agricultural Service, USDA.

(r) *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.

(s) *Generic promotion*—a promotion that is not a brand promotion.

(t) *Market*—a country in which an activity is conducted.

(u) *MAP*—the Market Access Program.

(v) *MAP participant*—an entity which has entered into an MAP agreement with CCC.

(w) *Participant*—a entity which has entered into an agreement with CCC.

(x) *Promoted commodity*—an agricultural commodity whose sale is the intended result of a promotion activity.

(y) *Sales team*—a group of individuals engaged in an approved activity intended to result in specific sales.

(z) *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.

(aa) *SRTG*—an association of State Departments of Agriculture referred to as State Regional Trade Group(s).

(bb) *STRE*—sales and trade relations expenditures.

(cc) *Supergrade*—a salary level designation that is applicable to certain non-U.S. employees who direct participants' overseas offices.

(dd) *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.

(ee) *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.

(ff) *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.

(gg) *U.S. industry contribution*—the expenditure made by the U.S industry in support of an approved activity.

(hh) *USDA*—the United States Department of Agriculture.

[60 FR 6363, Feb. 1, 1995; 61 FR 32644, June 25, 1996; 61 FR 58780, Nov. 19, 1996]

### § 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 expenditure on brand promotion, except for expenditures incurred by the MAP participant in administering its brand promotion program;

(ii) Any portion of salary or compensation of an individual who is the target of an approved promotional activity;

(iii) 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'');

(iv) Any land costs other than allowable costs for office space;

(v) Depreciation;

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

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

(viii) The cost of any arrangement which has the effect of reducing the selling price of an agricultural commodity;

(ix) The cost of product development, product modifications, or product research;

(x) Slotting fees or similar sales expenditures;

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

(xii) 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; 61 FR 32644, June 25, 1996]

**§ 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 contribution;

(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 promote a specific brand product 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.

(3) The Deputy Administrator shall determine, at the Deputy Administrator's discretion, whether two or more brand products in any given country are substantially the same product.

(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; 61 FR 32644, June 25, 1996]

### § 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) An expenditure has been made in furtherance of an approved activity;

(2) The participant or third party has transferred funds to pay for the expenditure; and

(3) 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) Fees for participation in retail, trade, and consumer exhibits and shows and booth construction and transportation of related materials to such shows;

(7) Trade seminars including space, equipment rental and duplication of seminar materials;

(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; and

(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;

(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) Air travel 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 Attaché/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) 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 stickers;

(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 funds were transferred to pay for the activity within 4 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]

### § 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 and travel vouchers. (Credit memos are not acceptable types of documentation for participant reimbursement claims); 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; 61 FR 32644, June 25, 1996]

### § 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. If an MAP participant fails to contribute the amount specified in its allocation approval letter, the MAP participant shall pay to CCC in U.S. dollars the difference between the amount it has 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.

### § 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 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.

(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)

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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.

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

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

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

## PART 1489—TERMS AND CONDITIONS FOR PURCHASE OF TOBACCO UNDER COMMODITY CREDIT CORPORATION EXPORT CREDIT SALES PROGRAM

Sec.
1489.1 General statement.
1489.2 Associations through which tobacco may be purchased.
1489.3 Purchase of tobacco.
1489.4 Export requirements for tobacco purchased.
1489.5 Failure to perform.

APPENDIX TO PART 1489—NOTICE TO EXPORTERS

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, as amended; 15 U.S.C. 714b, 714c.

SOURCE: Announcement PR TB–2, 30 FR 12067, Sept. 22, 1965, unless otherwise noted.

### § 1489.1 General statement.

Price support on tobacco is made available to producers through loans made by Commodity Credit Corporation (hereinafter referred to as ''CCC'') to producer-owned and controlled associations (hereinafter referred to as ''the associations''). Tobacco which the associations receive from producers and pledge to CCC as loan collateral is processed, stored and sold by the associations in accordance with usual trade practices. Sales proceeds are applied to repay the loan from CCC. Information on inventories, prices, and other terms and conditions of sale is issued and distributed by the associations, and will be furnished by the associations to any interested person upon request. This part sets forth the additional terms and conditions applicable to purchases of tobacco under the CCC Export Credit Sales Program (GSM–3, Rev. II) set out at 31 FR 2997 and any revisions thereof.

[30 FR 12067, Sept. 22, 1965, as amended by Amdt. 1, 31 FR 11013, Aug. 19, 1966]

### § 1489.2 Associations through which tobacco may be purchased.

The kind of tobacco handled by each of the associations and the names and addresses of the associations through which tobacco may be purchased are as follows:

| *Kind* | *Association* |
|---|---|
| Flue-Cured Tobacco ..... | Flue-Cured Tobacco Cooperative Stabilization Corp., Post Office Box 2718, Raleigh, N.C. |
| Burley Tobacco ..... | Burley Tobacco Growers Cooperative Association, Post Office Box 860, Lexington, Ky.; Virginia Burley Tobacco Growers Association, Inc., Post Office Box 549, Abingdon, Va.; Burley Stabilization Corp., 3919 Holston Drive NE., Knoxville, Tenn. |
| Dark-Fired and Dark Air Cured Tobacco. | Eastern Dark-Fired Tobacco and Dark Growers Association, 1109–11 South Main St., Springfield, Tenn.; Stemming District Tobacco Association, 125 First St., Henderson, Ky.; Western Dark-Fired Tobacco Growers Association, 202–206 East Maple St., Murray, Ky.; Dark Tobacco Sales Cooperative, Post Office Box 301, Farmville, Va. |
| Cigar Filler and Binder Tobacco. | Cigar Tobacco Cooperative, Post Office Box 23, Arcanum, Ohio; Conn-Mass Tobacco Cooperative, Inc., Post Office Box 550, Holyoke, Mass.; Northern Wisconsin Cooperative Tobacco Pool, Inc., Viroqua, Wis.; Wisconsin Cooperative Tobacco Growers Association, 28 West Fulton St., Edgerton, Wis. |
| Maryland Tobacco ..... | Maryland Tobacco Cooperative, Inc., Post Office Box 368, Upper Marlboro, Md. |

### § 1489.3 Purchase of tobacco.

(a) Upon issuance of a credit approval to a purchaser of tobacco (hereinafter referred to as ''the exporter''), CCC will notify the appropriate association of the credit approval number, name of

approved exporter, amount of approval, and other pertinent information.

(b) The exporter should arrange with the appropriate association for the selection and acquisition of the tobacco to be purchased. Selection may be made from any stocks pledged to CCC which the association has available for sale. To the extent that export requirements for the tobacco purchased are to be met by exporting cigarettes, the tobacco purchased shall be flue-cured, burley and Maryland tobaccos, in the following proportions: 58 to 63 percent flue-cured, 36 to 40 percent burley, and 1 to 2 percent Maryland. If less than an entire hogshead of any of the types of tobacco is needed to attain such percentages, the exporter shall make direct payment to the association for the remaining part of each such hogshead, and that part shall not be deemed to be purchased under the credit arrangement.

(c) The association shall invoice the selected tobacco to the exporter at the association's price and in accordance with all other usual sale arrangements of the association. The exporter shall submit a copy of the invoice, accompanied by the bank obligation prescribed by the credit arrangement, to Fiscal Division, FSA, U.S. Department of Agriculture, Washington, DC, 20250. Upon receipt of a copy of the invoice and an acceptable bank obligation, CCC will credit the amount of the association's sales price to the appropriate loan account of the association. CCC shall promptly notify the association of the credit to the loan account.

### § 1489.4 Export requirements for tobacco purchased.

(a) Within 90 calendar days from the date of the invoice or such extension of time as may be approved by CCC for good cause, the exporter shall cause exportation to the destination specified in the proportions stated in § 1489.3, purchased under the credit arrangement or the equivalent of such quantity as determined under paragraph (c) of this section, of the same kind of tobacco: *Provided,* That, if the tobacco purchased under the credit arrangement is flue-cured, burley and Maryland tobaccos in the proportions stated in § 1489.3, the exporter's obligation to export the tobacco purchased or an equivalent quantity of the same kind of tobacco may be met by exporting a quantity of cigarettes whose value at the rate of $2.25 per thousand for nonfilter brand cigarettes (including all-tobacco tipped standard brands) and $1.75 per thousand for filter and ''economy'' brands equals or exceeds the invoice value of the tobacco purchased under the credit arrangement.

(b) The exporter shall within 30 calendar days after exportation furnish to the Fiscal Controls Branch, Fiscal Division, FSA, U.S. Department of Agriculture, Washington, DC, 20250, proof of exportation which shall consist of:

(1) In the case of exportation by water, a nonnegotiable copy, certified as true and correct by the exporter or other person who exported the tobacco or cigarettes, of an onboard ocean bill of lading showing the number of containers of tobacco or cigarettes, the gross (or net) weight of such containers, the date and place of loading on board vessel, name of vessel, the name of the person who exported the tobacco or cigarettes, and the consignee and destination.

(2) In the case of exportation by rail or truck, a copy of the bill of lading under which the tobacco or cigarettes were shipped, together with (i) an authenticated landing certificate issued by an official of the Government of the country to which the tobacco or cigarettes were exported, or (ii) a copy of Shipper's Export Declaration authenticated by the appropriate U.S. Customs official. The bill of lading and supporting export form (landing certificate or Shipper's Export Declaration) must apply to the same shipment of tobacco or cigarettes, and such forms, or properly authenticated attachments, must show the number of hogsheads of tobacco or containers of cigarettes, the gross (or net) weight of such hogsheads or containers, the date and place of entry into the country of destination, and the name and address of both the person who exported the tobacco or cigarettes and the person to whom they were shipped.

(3) Where exportation is effected by other than the exporter, certification on the bill of lading, signed by such other person and the exporter, that

such exportation was caused by the exporter pursuant to this part.

(4) Where exportation or transshipment of tobacco has been made or caused to be made by the exporter to one or more of the countries or areas for which an export license is required by the Bureau of International Commerce, U.S. Department of Commerce, the license issued for such movement by such agency shall be identified in the bill of lading, by license number.

(5) A statement, certified by the exporter, showing information as to the kind or type, form, and quantity of the tobacco purchased under the credit arrangement, and of the tobacco or cigarettes exported, as follows:

(i) The kind or type of tobacco exported,

(ii) If the tobacco exported is stemmed tobacco, whether it was purchased in that form,

(iii) If stemmed tobacco was purchased and substitute stemmed tobacco exported, the quantity of each kind or type of unstemmed leaf tobacco, packed-weight basis, that is contained in the stemmed tobacco exported, with the quantities of unstemmed tobacco converted to a stemmed leaf equivalent by dividing the unstemmed quantities by the factor 1.29 for flue-cured and 1.35 for other kinds of tobacco,

(iv) If unstemmed leaf tobacco was purchased and stemmed tobacco exported, the quantity of each kind or type of unstemmed leaf, packed-weight basis, that is contained in the stemmed leaf exported,

(v) If cigarettes are exported, the brand name of the product, whether filter or nonfilter tip and the computations made in determining the amount (value) to be applied against the invoice value of the tobacco purchased.

(6) Such other proof of exportation as may be required by CCC.

(c) The quantity of tobacco exported shall be considered equivalent to the quantity of tobacco purchased (and required to be exported), if the weights of the tobacco exported (as shown by the proof of exportation) correspond to the weights of the tobacco purchased in the following manner:

(1) If unstemmed leaf was purchased and unstemmed leaf exported, the gross or net weights of the tobacco exported must equal or exceed the gross or net weight of the tobacco purchased.

(2) If unstemmed leaf tobacco was purchased and stemmed tobacco exported, the quantity of unstemmed leaf tobacco used in the stemmed tobacco exported must equal or exceed the quantity purchased.

(3) If stemmed tobacco was purchased and substitute stemmed tobacco exported the quantity of unstemmed leaf tobacco used in the stemmed tobacco exported, divided by the factor 1.29 for flue-cured and 1.35 for other kinds of tobacco, must equal or exceed the net weight of the stemmed tobacco purchased.

(4) If stemmed tobacco was purchased and unstemmed leaf tobacco exported, the quantity exported divided by the factor 1.29 for flue-cured and 1.35 for other kinds of tobacco must equal or exceed the net weight of the stemmed tobacco purchased.

(d) The proof of exportation furnished under this part shall not have been used, and shall not subsequently be used, as evidence of exportation under any other CCC or Department of Agriculture export program except to the extent that such proof is in excess of that needed to satisfy the export requirements of this part: *Provided, however,* That this limitation on the use of the proof of exportation shall not apply to the program providing for payments on export of certain kinds of tobacco set out at 31 FR 6862, 7556, and 9208 and any amendments thereof or supplements thereto.

(e) By submitting documents evidencing exportation the exporter represents and warrants that the commodity covered by such documents was not exported to, and has not and will not be transshipped or caused to be transshipped by the exporter to, any country or area for which an export license is required under the regulations issued by the Bureau of International Commerce, U.S. Department of Commerce, unless a license for such exportation or transshipment thereto has been obtained from such Bureau.[1]

[1] Information to exporters: The Department of Commerce Regulations prohibit exportation or reexportation by anyone, including a foreign exporter, of the commodity

*Continued*

[30 FR 12067, Sept. 22, 1965, as amended by Amdt. 1, 31 FR 11013, Aug. 19, 1966]

### § 1489.5 Failure to perform.

The exporter agrees to export tobacco or cigarettes as required by this part within the time specified herein, or to pay liquidated damages as herein provided. Failure to furnish proof of exportation within 30 calendar days after 90 calendar days after the date of the invoice or any extended period approved by CCC shall be prima facie evidence of failure to export. Failure of the exporter to export tobacco or cigarettes within the time required under this part will result in damage to CCC's export and price support programs. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC liquidated damages as follows: (a) Where the export requirements for tobacco are not met, for each day of delay in exportation, one-sixth of one percent of a base amount determined by multiplying the number of pounds by which the export requirements for tobacco are not met by the average invoice price per pound of the tobacco acquired from the association, or (b) where the export requirements for cigarettes are not met, for each day of delay in exportation, one-sixth of one percent of a base amount equal to the amount by which the value of the cigarettes exported, as determined under § 1489.4, fails to equal the invoice value of the tobacco bought under the credit arrangement: *Provided,* That in the case of either paragraph (a) or (b) of this section the total amount of liquidated damages assessed shall not exceed ten percent of the base amount: *And provided, further,* That no liquidated damages shall be assessed if CCC determines that failure to export or delay in exportation was due solely to causes without the fault or negligence of the exporter. In acquiring tobacco under a credit arrangement, the exporter agrees that these rates are a reasonable estimate of probable actual damages that would be incurred by CCC by reason of failure to export in accordance with this part.

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exported pursuant to the terms of these regulations, to prohibited countries and areas. The attention of the exporter is invited to the ''Notice to Exporters'' which accompanies these regulations.

APPENDIX TO PART 1489—NOTICE TO EXPORTERS

The Department of Commerce, Bureau of International Commerce, pursuant to regulations under the Export Control Act of 1949, prohibits the exportation or re-exportation by anyone of any commodities under this program to Cuba, the Soviet Bloc or Communist-controlled areas of the Far East, including Communist China, North Korea, and the Communist-controlled area of Vietnam, except under validated license issued by the U.S. Department of Commerce, Bureau of International Commerce.

For all exportations, one of the destination control statements specified in Commerce Department Regulations (Comprehensive Export Schedule § 379.10(c)) is required to be placed on all copies of the shipper's export declaration, all copies of the bill of lading, and all copies of the commercial invoices. For additional information as to which destination control statement to use, the exporter should communicate with the Bureau of International Commerce or one of the field offices of the Department of Commerce.

Exporters should consult the applicable Commerce Department regulations for more detailed information, if desired, and for any changes that may be made therein.

## PART 1491–1492—[Reserved]

## PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

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## 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) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

(2) With respect to a product of an agricultural commodity:

(i) A product all of the agricultural components of which are entirely produced in the United States; or

(ii) Any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimis component;

(B) Such component is not commercially produced in the United States; and

(C) There is no acceptable substitute for such component that is commercially produced in the United States (For purposes of this paragraph, 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.

**§ 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 United States agricultural commodity or a product thereof, as defined in § 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.

**§ 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 a payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 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.

**§ 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—[Reserved]

## 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) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

(2) With respect to a product of an agricultural commodity:

(i) A product all of the agricultural components of which are entirely produced in the United states; or

(ii) Any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimis component;

(B) Such component is not commercially produced in the United States; and

(C) There is not acceptable substitute for such component that is commercially produced in the United States (For purposes of this paragraph, 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.

**§ 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 United States agricultural commodity or a product thereof, as defined in § 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.

**§ 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 a payment guarantee is a United States agricultural commodity or product thereof, as defined in § 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.

**§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

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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) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and (2) with respect to a product of an agricultural commodity:

(i) A product all of the agricultural components of which are entirely produced in the United States; or

(ii) Any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimus component,

(B) Such component is not commercially produced in the United States, and

(C) There is no acceptable substitute for such component that is commercially produced in the United States.

(For purposes of this paragraph, 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]

### § 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 will be an United States agricultural commodity or product thereof, as defined by § 1493.201(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.

### § 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: Secs. 201, 202 and 203, 68 Stat. 454, as amended (7 U.S.C. 1721, 1722, 1723); sec. 2, 80 Stat. 1537, as amended (7 U.S.C. 1721, 1722, 1723).

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) *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) *Availability of ocean service.* (1) Prior to receipt of offers from commodity suppliers, checks will be made of available information from sources including, but not limited to, trade journal newspapers, port publications, steamship publications, and any other available information to determine the availability of appropriate steamship 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.* In consultation with the Secretary of Transportation, CCC shall take such steps during calendar years 1986–89 as are necessary and practicable to preserve annually the percentage share or metric tonnage, whichever is lower, of Title II, Pub. L. 480 bagged, processed, or fortified commodities exported from Great Lakes ports during 1984, as determined by the Secretary of Agriculture, consistent with the cargo preference requirements of the Merchant Marine Act, 1936, as amended, and without detriment to other port ranges.

[44 FR 27407, May 10, 1979, as amended at 52 FR 5729, Feb. 25, 1987]

### §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

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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; standing 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.

*KCFMO*—Kansas City Financial Management Office, 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.

### §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 Cooperating Sponsor may make adjustments between line items of an approved Program Operation Budget up to 20 percent of the total amount approved or $1,000, whichever is less, without any further approval. Adjustments beyond these limits must be specifically approved by the Controller and the General Sales Manager.

(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, CCCPSD, 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.

### §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.* In all cases where the Cooperating Sponsor arranges ocean transportation, whether by U.S. or non-U.S. flag vessel and CCC is financing any portion of the ocean freight:

(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, clarification, or submission of additional information. 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 17.5 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 copy of completed Form CCC–512;

(ii) Four copies of the original on-board bills of lading indicating the freight rate and signed by the originating carrier;

(iii) For all non-containerized grain cargoes,

(A) One copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

(B) One copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and

(C) One copy of the National Cargo Bureau Certificate of Loading;

(iv) For all containerized grain and grain product cargoes, one 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 notice of arrival at first discharge port submitted by the Cooperating Sponsor;

(vii) 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.

(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. *§ 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.

### § 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.

### § 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.

### § 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, KCFMO, of action taken to dispose of commodities unfit for authorized use.

### § 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, KCFMO, 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, KCFMO, 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, KCFMO, 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 KCFMO, 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 KCFMO, Chief, Debt Management Office information and documentation on such lost or damaged shipments when no claim is to be filed. When General Average has been declared, Cooperating Sponsors need not file or collect claims for loss of, or damage to, commodities.

(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 KCFMO, 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 provide to CCC all documentation relating to the claim.

(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.

**§ 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. The first report shall be submitted by the date specified in the Program Agreement,

and cover the time period specified in the Program Agreement. Reports thereafter will cover each subsequent six (6) month period until all commodities have been distributed or sold. 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. The first report shall be submitted by the date specified in the Program Agreement, and cover the time period specified in the Program Agreement. Reports thereafter will cover each subsequent six (6) month period until all commodities have been distributed, bartered, or sale proceeds disbursed. 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.

### § 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.

# FINDING AIDS

A list of current CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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# Material Approved for Incorporation by Reference

**(Revised as of January 1, 1997)**

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

7 CFR CHAPTER XIV (PARTS 1402–1499)
COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

7 CFR

Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America
P.O. Box 12285
Memphis, TN 38112

Specifications for Cotton Bale Packaging Material, June 1995 ..... 1427.5

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1485.23 (c)(2)(v) revised; (c)(2)(vi) removed; interim ..... 3548
(a)(2) amended ..... 32644
Regulation at 61 FR 3548 confirmed ..... 53303
1487 Removed ..... 8208
1491 Removed ..... 8208
1492 Removed ..... 8208
1493.400—1493.530 (Subpart D) Added; interim ..... 33831
1495 Removed ..... 8208
1497 Removed ..... 37574
1498 Removed ..... 37574
1499 Added ..... 60515